MINUTES OF THE
SENATE COMMITTEE ON TAXATION

Seventy-fourth Session
April 5, 2007

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:35 p.m. on Thursday, April 5, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Randolph J. Townsend, Vice Chair
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Bob Coffin
Senator Michael A. Schneider
Senator Terry Care

GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Tina Calilung, Deputy Fiscal Analyst
Russell J. Guindon, Senior Deputy Fiscal Analyst
Josh Martinmaas, Committee Secretary

OTHERS PRESENT:

Jim Gubbels, Chief Administrative Officer, Regional Emergency Medical Services Authority
Samuel P. McMullen, Regional Emergency Medical Services Authority
Robin L. Keith, Nevada Rural Hospital Partners Foundation
Carole A. Vilardo, Nevada Taxpayers Association
Edgar Roberts, Administrator, Motor Carrier Division, Department of Motor Vehicles
Vanessa Chamberlin, CEO, The Chamberlin Buzzell Entertainment Group

Joseph Guild, III, Motion Picture Association of America
B.J. Thomas, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada
Rob Rovere, International Alliance of Theatrical Stage Employees Local 720
Art Lynch, National Board Member, Screen Actors Guild
Hrair Messerlian, Executive Director, Nevada and San Diego Branch Administration, Screen Actors Guild
Denny R. Weddle, Nevada Coalition of Talent Agencies, Meetings and Convention Planners
L. Erin Russell, Nevada Development Authority
Dino DiCianno, Executive Director, Department of Taxation
Tim Rubald, Carson City, Interim Secretary, Commission on Economic Development
Brian K. Krolicki, Lieutenant Governor
Thomas R.C. Wilson, Former Senator, Nevada Tax Commission
Thomas Sheets, Las Vegas, Chair, Nevada Tax Commission
Ray Bacon, Nevada Manufacturers Association
Barry Smith, Executive Director, Nevada Press Association
Joesph A. Turco, America Civil Liberties Union of Nevada
Jason D. Guinasso, Village League to Save Incline Assets, Incorporated
Suellen Fulstone, Village League to Save Incline Assets, Incorporated
Maryanne Ingemanson, President, Village League to Save Incline Assets, Incorporated
Todd Lowe, Village League to Save Incline Assets, Incorporated
Doug Sonnemann, Assessor, Douglas County
Dan Musgrove, Clark County
Terrance Shea, Washoe County District Attorney's Office
Joel Benton, Carson City District Attorney's Office; Carson City Assessor's Office
Lisa Gianoli, Washoe County

CHAIR MCGINNESS:
I bring this meeting of the Senate Committee on Taxation to order. We will open the hearing on Senate Bill (S.B.) 501.

SENATE BILL 501: Makes various changes to provisions relating to taxation and nonprofit entities that provide emergency medical services. (BDR 32-1406)

JIM GUBBELS (Chief Administrative Officer, Regional Emergency Medical Services Authority):
Regional Emergency Medical Services Authority (REMSA) and Care Flight is a not-for-profit company serving patients for Washoe County through a franchise agreement with the Washoe County District Health Department. We receive no tax subsidy to provide our services. The only source of revenue is through our patient billing.

To give you a history of ambulance service in Washoe County, prior to our franchise started in 1986, there were three private ambulance companies. There was basically chaos. Two of them had filed for bankruptcy, and the third was struggling. There was no consistency with patient care and no requirements for response times. If there was a car accident prior to REMSA, all three companies would show up thinking there was a possible payment resource while if a senior person needed to be transported from their home to a nursing home, it could take two or three days. With REMSA, it put guaranteed response times and consistent patient care into the system.

Annually, REMSA responds to about 50,000 requests for service and transports approximately 32,000 patients per year. We only charge if we transport. Half of these transports can pay their bill. Care Flight transports about 1,840 patients per year. That includes Washoe County patients as well as our neighboring rural communities. About 75 percent of rural patients come from rural hospitals or ambulance providers who call us for immediate transport.

Regional Emergency Medical Services Authority also has community services. We have a training center that hosts a paramedic and emergency medical technician program. We do community education including cardiopulmonary resuscitation, automatic external defibrillator classes, first aid and babysitting. We are active in injury and prevention programs. We are the lead agency for the SAFE KIDS Washoe County Coalition and support our own Point of Impact Child Safety Seat Program. We also serve our community by participating in all community drills and providing Tactical Emergency Medical Services that respond with all of our Special Weapons and Tactics Teams. We respond to all working fires in our jurisdiction and stand by to give immediate assistance to a firefighter who may be injured.

It is REMSA's intent to support our law enforcement and fire agencies within our community, but we would like to see some relief in regards to fuel tax and

registration fees the same way as other not-for-profit agencies. It is important we mange our costs since we receive no subsidy and rely on patient revenues to provide all these community services. Care Flight primarily supports the rural patients in Nevada; we are looking for tax relief that would help with our leased helicopters. We would appreciate your support on S.B. 501 to allow us to continue our wide range of services.

CHAIR MCGINNESS:
You indicated in your testimony something like 75 percent of your patients are rural?

MR. GUBBELS:
Yes, that is for Care Flight. With Care Flight, we have one helicopter based in Reno and the Minden-Gardnerville area. We can range out to about 150 miles. We can go as far as Battle Mountain for patients and have responded down to Tonopah.

CHAIR MCGINNESS:
The fiscal note was not available in time for printing, but it is in the stack of information you have. It says "BDR 32-1406, SB 501, Executive Agency Fiscal Note" (Exhibit C).

SAMUEL P. MCMULLEN (Regional Emergency Medical Services Authority):
Our bill has multiple parts. Section 1, functionally, is an exemption from the payment of excise taxes. The way Washoe County structured us, we function as a public entity. Washoe County chose to do it through a nonprofit corporation as an authority over operations. In effect, it is a governmental franchise, although not a governmental unit or entity. Second, its real hallmark is it needs revenues to break even on costs; then after that, there is no profit. In these issues, we tried to find a way to be treated similarly to government entities providing these services. Section 1 is the exemption for motor vehicle fuel and aviation fuel for turbine-powered aircraft. In accordance with conversations with the bill drafters' office, we have limited it to nonprofit organizations created with a permit to own or operate an ambulance or air ambulance pursuant to *Nevada Revised Statute* (NRS) 450B. We are the only entity under general legislation for this application.

The next section is more complex in the sense there is a clear exemption for nonprofits from sales and use taxes. What I say now on section 2 equally

applies to section 6. In 2002, REMSA was led to believe a vehicle like this would be exempt as well and structured their arrangement by lease whereas they could have purchased it and gotten a deduction. In 2005, it was clarified as not appropriate. The bank that got the sales tax deduction did not flow through or was not exempt. What this does is allow the exemption to flow through that leasing transaction as well for an entity like this.

Section 3 is the motor vehicle fuel tax as it applies in a different chapter, NRS 373. We have covered this under numerous chapters to cover them all. Section 4 is the same thing for NRS 373.030. Section 5 is similar for counties with populations under 400,000. Section 6 is the companion piece for sales and use tax in NRS 374. Section 7 addresses the registration and the governmental services tax imposed by NRS 371; it would take that away for an ambulance owned by a nonprofit organization.

I would like to explain section 8. You will probably hear some testimony from the Nevada Taxpayers Association because it deals with retroactivity. The language given to us by the Nevada Bankers Association formed the basis for the bill draft request (BDR) to reach back for the whole transaction; that is why the date goes back to 2002. It would apply only to this entity and is approximately $22,000 a year for the last three or four years.

I have an additional request. We have covered gasoline with this bill but not diesel fuel which a lot of the vehicles, most importantly the ambulances, run on. We would like to ask for an amendment applying to NRS 366.200 diesel fuel. You have the fiscal note in front of you, Exhibit C. We are talking about less than a couple hundred-thousand dollars when you add it all together. Remember, this entity is a community asset and service that makes no profit. We are just doing what government would do. It is amazing what they can do with $10,000 to $25,000. They provide ambulance service for every resident in Washoe County for $40 per person if they have no insurance or cover the part of the bill not insured. This is the type of community service they provide with these funds. We would use this money wisely and effectively.

CHAIR MCGINNESS:
Could you talk more about the retroactivity?

MR. MCMULLEN:
The lease occurred sometime in 2002 when REMSA understood they had financial choices at the time that removing the exemption from taxes in a lease setting made the lease a better option. Three years later, they found out the lease option had a barrier because it was an indirect purchase and not called a motor vehicle; they said it had to be a different animal to get that clear exemption. Consequently, they lost the exemption, and it cost them almost a $100,000 over the last four years they could have otherwise avoided. This sounds expensive, but the excise tax exemption tries to correct the situation for air ambulances consistently given to motor vehicles.

CHAIR MCGINNESS:
If this changes and you get a refund, would the refund come from the Department of Taxation?

MR. MCMULLEN:
Yes.

CHAIR MCGINNESS:
Mr. Gubbels, you indicated 75 percent of your air transports are from rural Nevada. Are those in rural Nevada eligible for your $40 ambulance transfer?

MR. GUBBELS:
For $59 a year, you can have a membership for our Flight Plan. If we transported you or any member of your family, there are no out-of-pocket costs to you.

CHAIR MCGINNESS:
That is outside of Washoe County?

MR. GUBBELS:
Yes.

CHAIR MCGINNESS:
What does a regular flight from Banner Churchill Community Hospital to Washoe cost?

MR. GUBBELS:
Our base rate is about $7,000.

SENATOR COFFIN:
Earlier, you mentioned your range. Do you have agreements with other companies in Nevada so you do not duplicate areas of coverage?

MR. GUBBELS:
We do not overlap services in the sense of other medical helicopters. We are the primary response for Nevada. If we cannot get to that flight, we call another close flight program such as California Shock Trauma Air Rescue to come in and take that flight.

SENATOR COFFIN:
I do not ask because of competition but because it sounds like you have fuel limitations. Do you cache fuel somewhere that you can use? This is good for all of us; you sometimes have to remind people this is not a rural or northern Nevada bill. There has to be some dead zones where people have to be transported by ground to a certain place for pick up.

MR. GUBBELS:
We could refuel in Winnemucca or Battle Mountain. Once we are fully loaded, our radius is about 300 miles. We will go out 150 miles because we have the other 150 miles coming back. If necessary, we will go to Battle Mountain.

SENATOR COFFIN:
As long as fuel is out there and places are not uncovered simply because of a lack of fuel.

MR. MCMULLEN:
They also work in tandem with ground transport. The Battle Mountain pickup was a mining accident where they moved the party tens of miles and picked them up.

SENATOR COFFIN:
I hate to see people handled twice; it slows down the transport.

ROBIN L. KEITH (Nevada Rural Hospital Partners Foundation):
We are here to lend our support to the bill. Sixty-six percent of the cases come from rural Nevada; we are dependent on air ambulance services for highway trauma and other types of major injuries.

One other ambulance service in rural Nevada may benefit from this bill. That would be the hospital in Fallon, Banner Churchill Community Hospital. It is the only 501(c)(3) status hospital in the state that operates the ambulance service for its community and has the permit NRS 450B refers to.

CHAIR MCGINNESS:
Do you think the language covers Banner Churchill Community Hospital?

MS. KEITH:
I do, but am waiting for the answer from Banner Churchill Community Hospital as to what type of permit they have. I do not see any specific provisions in the hospital licensure chapter about how hospitals operate ambulance services. My assumption is they have to get a permit under NRS 450B.

CAROLE A. VILARDO (Nevada Taxpayers Association):
As Mr. McMullen indicated, I would ask that section 8 be deleted. I appreciate the problem of doing a lease, and I understand this is an important service, but from a policy position, section 8 is bad policy. Once you have set up retroactive refunds for one service, two or three more people next session will remind you about this one.

EDGAR ROBERTS (Administrator, Motor Carrier Division, Department of Motor Vehicles):
The Department of Motor Vehicles has submitted a fiscal note (Exhibit D) which reflects the loss in gas tax to the State Highway Fund, counties and airports. We were also informed they were amending it to include diesel, so one sheet in your handouts (Exhibit E) projects losses in the future biennium at $75,000. The original fiscal note submitted by the Department only included the gasoline and jet fuel taxes. The amounts for fiscal year (FY) 2007-2008, Exhibit D, are negative $3,418. Fiscal year 2008-2009 is negative $3,538 with the effect on the future biennia of $7,076. With the addition of the diesel amendment, Exhibit E, FY 2007-2008 has a loss of $35,716, FY 2008-2009 shows the loss at $37,502 with the future biennia loss at $75,004.

CHAIR MCGINNESS:
We will close the hearing on S.B. 501 and open the hearing on S.B. 321.

SENATE BILL 321: Provides certain economic incentives for registered motion picture companies. (BDR 18-1182)

SENATOR BOB COFFIN (Clark County Senatorial District No. 10):
In 2005, former Lieutenant Governor Lorraine T. Hunt, with the backing of the business and labor community, pushed for S.B. No. 493 of the 73rd Session. We all voted for that bill and sent it to the Assembly where it died, clogged up with gubernatorial politics and misunderstandings about labor unions. I was called a few months ago by Vanessa Chamberlin, CEO, The Chamberlin Buzzell Entertainment Group, who had been to a seminar and found out Nevada had fallen to the bottom in attracting film production.

A bill like S.B. 321 is designed to not only promote the State of Nevada but provide jobs for Nevada people. We have plenty of skilled, trained people who can make movies here. We are a well-known place, and you wonder why we would have to offer incentives. If we do not offer incentives and 49 other states do, you become uncompetitive. We have redrafted former Lieutenant Governor Hunt's bill with a proposed amendment (Exhibit F) to confront the problem that occurred in the Assembly, get it out in the open and make sure there are no misunderstandings.

We have a huge pool of talent in Nevada ready and willing to work, but they have to travel elsewhere to work. More of these jobs should be done in Nevada. If production companies come here because of an incentive, it helps all of us. We need to project the best image about our state. If local people see folks coming from out of state to do work they could do, it is pretty demoralizing. Labor on these productions jump in and jump out, spend little time and pay no taxes in Nevada.

The proposal with the amendment, Exhibit F, adds two components to the bill as originally printed. The first requires a labor component of 30 percent in order to get any of the exemptions mentioned. This is where trouble occurred in the Assembly because somebody said stagehands and other guild workers should be labor union people. This language simply allows local workers to be employed. Organized labor has decided it will get its fair share of employees in these jobs, so they have dropped their position.

Page 2 of the amendment in Exhibit F—we are not redrafting the bill, we are addressing the guts—defines what constitutes a motion picture. We use the term "motion picture company" as broad as we can because we want anything and everything that can be filmed, videoed and distributed electronically or in person in any medium.

My son, a grip in the business in Los Angeles, is busy and never comes to Las Vegas. He studied film at the University of Nevada, Las Vegas (UNLV) under the great Francisco Menendez, a true treasure who works on the faculty at UNLV. We have engaged one of the best people in the business and a letter from him (Exhibit G) encourages you to support the bill.

There is a fiscal note on this bill (Exhibit H) because when you have exemptions or abatements, you have revenue loss. This fiscal note, Exhibit H, is going to be revised. The people from the Nevada Department of Transportation have a revision that lowers the note. The tax definition of a company versus a project—these exemptions would be awarded by project and not just by company—allows a project to come in, stay in and be exempt from everything it does. It has to be by a project basis. The Nevada Film Office will testify on how to do that and keeps the records. We must remember if no revenue comes in and no money is spent, no tax money is collected. Some fiscal notes we encounter address business or other expenditures that citizens make that take away from budgeted funds. In this case, we have not budgeted for these funds because we are not getting the business.

VANESSA CHAMBERLIN (CEO, The Chamberlin Buzzell Entertainment Group):
I have prepared testimony (Exhibit I).

JOSEPH GUILD, III (Motion Picture Association of America):
The Motion Picture Association of America strongly supports this bill. I will give examples why. What Senator Coffin said about competition is an important part of the rationale to support this bill. This year in legislatures across the country, over 20 states have introduced incentive measures; some are similar to this and some are not. This is a modest measure but a good start. Last year, 15 legislatures across the country enacted production incentive measures for motion picture companies.

As Ms. Chamberlin mentioned, her business would greatly profit from the production of film enterprises in this state, but so would many other businesses and laborers—both union and nonunion.

About ten years ago, the city of New York saw film business move away from its city. The Mayor's Office recognized that and created a "Made in NY" incentive program which brought over $2.4 billion in film production business to the city over the last two years. Some 276 films were shot in New York City

during this time. They use Las Vegas a lot in films and television programs—usually an aerial flyover or the Welcome to Fabulous Las Vegas sign, but they do not bring the primary activity to Las Vegas because there are no incentives.

CHAIR MCGINNESS:
Are there any motion picture companies in Nevada? We are giving this break to out-of-state companies?

MR. GUILD:
I do not know the answer to that question, but somebody from the state office may answer that.

SENATOR COFFIN:
Since it is by project and not company, a Nevada-based company may get an exemption as well as one from anywhere. The point is to bring them here to produce films whether they are based here or not.

B.J. THOMAS (International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada):
I am here in support of S.B. 321. The International Alliance of Theatrical Stage Employees Local 720 has been around since 1939 and has about 5,000 people working in all phases of entertainment (Exhibit J). These members and their families also support this bill. The main purpose of this is to hire locally and keep some business here in Nevada rather than have people coming in and taking their suitcase and money out of the state.

ROB ROVERE (International Alliance of Theatrical Stage Employees Local 720):
I have some numbers (Exhibit K, original is on file in the Research Library) that complement what was said about productions in Nevada. Forty-four states have incentives. We are in a race to the bottom right now; we do not have a seat at the table. We have some good things to offer, the No. 1 being our proximity to California. They do come over and film, but the first thing they ask is what are your incentives? What have you got going? Illinois created film incentives in 2003 and spending on film production in the state jumped from $26 million to $94 million in 2005. Louisiana, which has one of the most aggressive incentive programs in the United States, grew film production from $11.8 million in 2002 to $514 million in 2005 according to the Governor's Office of Film and

Television Development. Our neighbor Utah estimates they get a rate of return of 15 to 1 for every dollar they put into production. It is a $50-billion-a-year industry, and the goal is to build infrastructure. If we are looking for an industry that is nonpolluting and non-extracting, this is it. It creates jobs and infrastructure wherever it roams throughout this state. In New Mexico, Governor Bill Richardson has been leading the way. They did not have much in the way of film industry, and they are now hitting close to $500 million a year. They just had a new studio built in Albuquerque. So much production is going there because of film incentives they call it "Tamalewood." New Mexico is to film production what Nevada was to gaming in the early days. It is building infrastructure and incubating an entire industry almost overnight. The total impact for every type of production also includes a multiplier effect. This occurs as off-site spending—at restaurants, hotels, outlets and other businesses—and recirculates through our economy. I fully recommend you to do pass. We could build another industry in this state we desperately need.

SENATOR CARE:
Is there not something to be said about the allure of a film location? It would seem to me a movie like *Leaving Las Vegas* was filmed in Las Vegas once the decision was made to make the film. I know *C.S.I., Crime Scene Investigation,* is suppose to be Las Vegas but is not always filmed in Las Vegas. Talk a little bit about the location itself. Surely there is value, aside from the incentive argument. You are going places regardless of the economic incentive are you not?

MR. ROVERE:
You are correct, Senator. The industry can virtually shoot anywhere, it is a digital industry. We were discussing today that two of *The Lord of the Rings* were transferred by an Apple iPod. You can shift digital production anywhere. When someone comes into the state for the locations—whether for the beauty or the location shot is exactly what is required, all things being equal between Nevada, Idaho and Louisiana, they are going to take the state with the film incentives.

ART LYNCH (National Board Member, Screen Actors Guild):
One element has not been mentioned. What about just plain citizenry, individuals who work at businesses such as restaurants or catering services? Even in the hotel-casino industry, a thing called per diem gets spent where? Wherever they are shooting. In a small town, the impact can be tremendous.

The young, talented people of this state need the opportunity to work and get the hands-on experience. There is little opportunity in Nevada for this experience. The CSI production shoots a total of four, sometimes five days a year in Nevada. The technology is available to shoot anywhere. When you talk about Nevada's beautiful locations, a long time ago, the Rutger Hauer film *The Hitcher* received reviews in *The Washington Post* that complimented the authentic west-Texas scenery. It was filmed here in Nevada. If you market, we can represent almost anywhere. As the work comes here, locals will be working and the money will be spent within the community. When an out-of-state crew comes in, their paychecks go home with them. The best way to generate revenue which will generate even more revenue is to encourage local hiring and to encourage production to come here.

HRAIR MESSERLIAN (Executive Director, Nevada and San Diego Branch Administration, Screen Actors Guild):
I have prepared testimony (Exhibit L) and an anecdotal story. We received a letter of support from a producer who recently shot in the rural area of Ely, Nevada. He shot on what we call a low-budget production. It was $600,000 dropped in Ely for a couple weeks of production. This is the type of money we are talking about and benefit that awaits us if we extend incentives across a broader spectrum.

DENNY R. WEDDLE (Nevada Coalition of Talent Agencies, Meetings and Convention Planners):
I represent an association of about 20 small businesses in southern Nevada. We concur with the previous testimonies and would like you to endorse this bill.

L. ERIN RUSSELL (Nevada Development Authority):
We think S.B. 321 offers economic development and exposure to the state. Therefore, we want to go on record lending our support to this legislation.

MR. ROBERTS:
The Department has submitted a fiscal note on S.B. 321, Exhibit H, regarding the loss on fuel permit revenue. Senate Bill 321 also proposes to exempt intrastate and interstate motion picture companies from the imposition of the $30 fee imposed for a special fuel permit. We do not charge for the Nevada Special Fuel User's License.

CHAIR MCGINNESS:
Who would administer this? If a film company comes in with several diesel trucks, would they be eligible for the dyed fuel program?

MR. ROBERTS:
This is for clear fuel and affects those companies registered with the Division of Motion Picture that come in with an out-of-state carrier over 26,000 pounds without a Nevada license and wish to get a fuel permit to travel within the state.

CHAIR MCGINNESS:
They have to apply for a rebate?

MR. ROBERTS:
They would be exempt from having to stop and pick up a special fuel permit from one of the vendors before entering the state.

DINO DICIANNO (Executive Director, Department of Taxation):
With respect to the testimony by Senator Coffin, in light of the amendments and our review of the fiscal note, we request an opportunity to redo the fiscal note given the new definitions. The fiscal note, with regard to sales and use tax, would be substantially less.

TIM RUBALD (Carson City, Interim Secretary Commission on Economic Development):
I have provided you with a handout (Exhibit M). As you have heard, filming is a competitive business, and we are not doing well. One reason is our lack of incentives. When Charles Geocaris, Director, Division of Motion Pictures, Commission on Economic Development, and Deputy Director Robin Holabird go to functions, they are asked about the types of incentives in Nevada. We have states and countries writing checks to production companies to make their productions and films in those states and countries. When they ask about Nevada's incentives, we say, "We have wonderful scenery and good people to work with, but as far as direct fiscal incentives, we do not have anything to offer you." The fiscal incentives is why we are here today. We want to provide a limited incentive program that will help increase Nevada's competitiveness. We need to get off the no-incentives-offered list.

I have clarifications for some testimony. Purchases made in the production of a specific project are not necessarily by companies; this is a project by project function for taxable purchases. The Breakdown of Spending chart in Exhibit M, shows 50 percent of the $106 million spent in calendar year 2006 as wage-related and not subject to anything in S.B. 321 with regard to sales and use tax abatement. When you get to the last line of this chart, 10 percent of that $106 million would be affected by the partial abatement of sales and use taxes proposed in the bill.

As these companies come into town, they spend a lot of money. Last year, we estimated $106 million. A lot of that money was spent and stayed in the state not only through the per diem but in additional jobs. Page 2 of Exhibit M lists industries where some of those jobs were created. We have a unique model at the Commission on Economic Development called Regional Economic Models Incorporated. The industry chart of page 2 of Exhibit M shows the total economic impact of that $106 million in 2006 output at approximately $148 million. We used an extremely low multiplier of 1.39 in the model to run these numbers partly because of a lack of diversity in Nevada industry. This $148 million generated in economic activity created about 2,000 jobs in the state in addition to whatever went outside the state. Senate Bill 321 will cost the state nothing. If this brings jobs and allows us to remain competitive in the industry, the economic impact generated will offset any costs. A significant and positive situation of $26 million will result from this bill.

I distributed a copy of the proposed amendment (Exhibit N) for entry into NRS 374 like the industrial tax abatements we use now without a vote of the people. Section 4 of the bill needs to be deleted. The intent of this amendment is to abate all but the 2-percent sales and use taxes like with the industrial abatements. If you delete section 4, you delete the reference to NRS 372 which is the portion of those taxes voted on by the people in the 1950s. We propose a partial sales and use tax abatement through the use of NRS 374 and 377. We ask an additional subsection 3 be added to section 5 as described in Exhibit N. The Department of Taxation issues a letter to companies receiving abatements from the Commission on Economic Development. Those companies submit their receipts on a monthly basis and pay the 2 percent due in unabated taxes.

MR. DICIANNO:
If we are talking about an abatement and not an exemption, then you still flow within the Streamlined Sales and Use Tax Agreement. Mr. Rubald is referring to

provisions with respect to abatements for new and expanding businesses. If those provisions are changed, then he is correct; we would issue a letter to those companies for that abatement from the local portion of the tax, and then they submit the 2-percent portion.

BRIAN K. KROLICKI (Lieutenant Governor):
I personally support the intent of S.B. 321. It is an exciting industry in Nevada that can be even better. This is one of those few tools we can have in our box as we go forward and try to pursue these things. I urge your nod of approval.

CHAIR MCGINNESS:
We will close the hearing on S.B. 321 and move on to S.B. 448.

SENATE BILL 448: Revises provisions governing certain appeals to the Nevada Tax Commission. (BDR 32-1353)

THOMAS R.C. WILSON (Former Senator, Nevada Tax Commission):
I am appearing for the Nevada Tax Commission because I was engaged as legal counsel before to represent them. The Commission supports S.B. 448. The issue is the taxpayers' right to close the hearing to protect confidential business information. For the last 12 years when a taxpayer has requested closure, the Commission has simply granted it. They take evidence and information pertaining to the issue from deliberations through voting, after which the decision and rationale of the Commission is announced and disclosed.

The Commission agrees to administrative regulation giving the Commission the chance to determine whether the hearing should be closed to protect taxpayer information. The hearing cannot be closed simply because somebody wants the hearing closed, there has to be confidential information to protect. Oftentimes, the definition of confidential information is defined by the eye of the beholder, so the regulation proposed provides administrative procedure to see if closure is justified.

The principal issue presented by the companion Assembly bill is whether deliberation should be closed not just for taking information. If the Commission has an administrative hearing to determine it warrants closure, then it may be closed, but there has to be a finding. The purpose is to test whether the information is confidential and warrants closure. If it is not sensitive or proprietary but the kind of information that would adversely affect the

taxpayer—with respect to his financing, credit, some business secret or confidential information—that is the criteria the taxpayer can pass upon and make a judgment. This is extremely important; there is no difference between taking the evidence and deliberation. You close the hearing to receive the taxpayer's confidential information but then address the confidential information in deliberations. If you cannot deliberate privately, you may as well admit it in the first place and not close the hearing at all upon receipt. As the S.B. 448 originally proposed, it is not consistent that the Commission may continue to close during the receipt of information but then be open if they are to disclose. You cannot have it both ways. Legislation and laws have to be honest and even-handed. If you justifiably receive the information in a closed hearing, you have to be able to discuss it and evaluate it at the same time. A statute on the books makes it a criminal misdemeanor if an employee, member of the Commission or officer of the Department of Taxation were to disclose the taxpayer's confidential information. It is a sensitive issue for employees and officers. That is the reason for the public policy. Some say it is all right to receive it in open session, but you have to deliberate in closed session. That is not logical to me. The Commission would agree with an amendment stating justification has to be shown that the information is confidential and warrants closure. That would be a good addition to the law.

The overall protection and actual vote is another matter. I once asked former Chair of the Nevada Tax Commission Barbara Smith Campbell what the sensitivity was with respect to closing a vote. A distinction needs to be made. The Commission uses straw votes to bring itself to a decision. This is complicated stuff; it is difficult and not easy to understand. The deliberative phase of the Commission's hearings takes a good deal of time, effort and discussion, so there will be a straw vote, "How do you feel about this motion?" It may be ambiguous with some having an opinion and some not. Either way, if there is a need for further discussion and deliberation, deliberation continues. There may be three, four or five straw votes before the Commission understands the effect and weight of the information and is ready to conclude the matter. That vote is then final. There is nothing wrong with making that vote final or disclosing the vote after the closed hearing. You can even have a final vote again on a motion so it is on record. Maybe it is misconstrued by some, but as part of the discussion in the deliberation phase, it is why deliberation closed. The Commission has no objection to your bill. I wanted you to know that piece of background and the central issue in the legislation pending before this Legislature—particularly in the Assembly.

SENATOR CARE:
I put my disclosure statement on file with the Legislative Counsel Bureau the second week of the session and disclosed that Mr. Wilson is a partner with McDonald Carano Wilson Limited Liability Partnership as am I. I incorporate that disclosure on file into my comments here today.

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):
This bill came about in discussion with Thomas Sheets, Chair, Nevada Tax Commission, and he was concerned this issue needed to be addressed. I agreed and asked for the BDR. We tried to base it on a process that worked well for the Public Utilities Commission of Nevada. It is a good fit.

THOMAS SHEETS (Las Vegas, Chair, Nevada Tax Commission):
There are two public policies to balance. One is what degree of rights we accord taxpayers with respect to confidential and proprietary information that they make available when requesting a refund or responding to a liability assessed against them. The competing public interest is the public's right to know in an open-meeting type setting. The balance is what we ask the Legislature to consider.

Litigation that first ensued in the district court is now in the Nevada Supreme Court over one of the Commission decisions. The opinion over the last 12 years was the Legislature had spoken and taxpayer rights were paramount. If they requested a closed hearing in a narrow sales or use tax appeal situation, they were granted those rights, and the Commission conducted themselves accordingly. The issue came into question at the fourth part of a four-part hearing in a case that involved a particularly large refund. At that point, our legal counsel changed its interpretation of the statute from the last 12 years, and the Commission simply said to its counsel, "The law in our view has not changed, the interpreter has. Are you sure you are right?" That is what led to the brouhaha and why the Commission thought it important for the Legislature to reassess the situation and decide whether to rebalance taxpayer rights and the right to open government.

We like S.B. 448. It codifies what we did in a rule-making. We effectuated and addressed balance issues raised in the media. We were constrained by statute and the courts told us how to conduct ourselves, so our regulation was adopted accordingly. It has limitations; an even better reform may put some language in this bill which specifically talks about confidential and proprietary information.

This gives the Commission the discretion to not automatically close an entire hearing if there is no reason. When conducting Commission meetings, I am mindful that a legislatively directed taxpayer bill of rights says we are to respect the rights of taxpayers in any number of different ways. I have tried to conduct the meetings to effectuate that policy giving the taxpayers a great deal of benefit.

SENATOR CARE:
Mr. Sheets, we rewrote certain provisions of the Open Meeting Law last session so those people entitled to a closed hearing can waive that right at any time once the closed meeting starts. If a taxpayer requests a closed hearing, can the taxpayer at some point in the proceedings say, "Wait a minute, I want this open"? The rationale for doing that last year with the Open Meeting Law was the decision may be made public, but perhaps the person who was the subject of the hearing thought, "I will not be able to get my story out. I better have the press present, so I am going to waive the remainder of the hearing."

MR. SHEETS:
If that happened, we would unseal the transcripts and open the hearing up at that point. We have conducted ourselves—and the legal advice we have received, other than for the last iteration that led to the lawsuit—as it was really the taxpayers' call whether we open or close a hearing in these narrow sales and use tax appeal cases.

SENATOR WILSON:
A Legislative Counsel Bureau opinion dated August 30, 2005 (Exhibit O), develops and explains the relationship between the right to close in Open Meeting Law and that the taxpayers' right to close is an exception to the Open Meeting Law under particular circumstances. The Attorney General filed an action with the Commission's lawyer for violation of an Open Meeting Law in connection with a matter. I tried the case on behalf of the Commission and I present a copy of the district court's opinion (Exhibit P) signed by former District Judge Michael R. Griffin who also talks about the same principles and circumstances. Both are helpful and instructive in a historical explanation of the what and why behind the law and policy. This decision is presently subject to an appeal if the district court ruled in favor of the Commission. It is presently subject to an appeal taken by former Senior Deputy Attorney General Neil Rombardo. The briefing is complete, but we have not received notification of request for oral argument. We are more than hopeful that the

Nevada Supreme Court is going to affirm, but these opinions are clarifying and helpful.

SENATOR TOWNSEND:
It is important to underscore two things. First, it is important to read the responses from our colleague to understand how we got to this place. If we go back to the premise that the exemption to the Open Meeting Law was granted for the Nevada Tax Commission, the purpose was simple as a voluntary compliance to the tax code. If perceived by a taxpayer without a question, challenged by the tax department and they lost, then the taxpayer would not have the kind of rights afforded them unless they could expect their proprietary information to be held in confidence. My suggestion—like former Senator Wilson, to include the responsibility of the Commission to decide whether the information warranted a closing—is to meet that balance. This Committee spent time in front of the Nevada Tax Commission that helped us understand their responsibilities. Senate Bill 448 should go a long way in helping the Commission meet their duties but give a clear and concise direction so the public is aware what the rules are, whether they are a taxpayer, casual observer to the process, media person or a competitor.

CHAIR MCGINNESS:
Senator Wilson, do you have language proposed for that amendment or was that amendment proposed by you?

SENATOR WILSON:
We will get the language to you in the next couple of days.

SENATOR CARE:
Since former Senator Wilson referenced the appeal, if the statute becomes law—I do not know the facts of the case—it does not apply to any appeal taken prior to the effective date of S.B. 448.

RAY BACON (Nevada Manufacturers Association):
The difference between S.B. 448 and the Assembly bill is the Assembly bill leaves the ability to do confidential information but carefully restricts it to financial information. Any time we put company processes, technology, software, firmware and those things in open deliberations, we have taken that company and thrown their competitive advantage to the wind. Patents almost guarantee public disclosure because nobody respects intellectual property in a

major portion of the world. Consequently, when you file a patent, they get it. The process and product will be copied in a matter of weeks or days. Without closing the deliberations, we have just taken every company in this matter, including several major software licensing operations, and put them at risk. I have the utmost confidence that at some point in our future, a tax case will involve one of those companies; it has to happen.

BARRY SMITH (Executive Director, Nevada Press Association):
The comments already made cover a couple things I wanted to mention, but I want to reiterate because this bill and the Nevada Tax Commission must step in the right direction because they need to find a balance. They have been put in a corner as to how they deal with this; legislation is needed.

One thing talked about that belongs in the bill is the need for the Commission to make the decision and determination whether it goes into a closed session; that reason would be about proprietary or confidential information. The Commission needs to make the determination rather than the taxpayer. Complicated issues come before the Nevada Tax Commission; a lot of discussions and decisions involve confidential information. They are not all that way. It is possible for the Commission to consider and hear confidential and proprietary information and then come out and discuss issues in an open session. There is a great value to that, it is how we understand the Commission's policy and decision-making process. It is how the public benefits from what the Commission does. The proposed regulation has the Commission issuing an abstract after the decision; that is a good idea and good way to handle that. If there was an open discussion, the abstract would not be necessary because it would be out there and people would understand how they came to the decision.

On the abstract itself, there are a couple things if this bill goes forward. It specifically says a reasonably practicable time; when I spoke to the Commission back in December 2006, I suggested a specific time line of 30 days. Specific information needs to be in there, such as the name of the taxpayer and the amount of the tax refund or whatever the decision may be, so that becomes part of the public record.

SENATOR TOWNSEND:
Former Senator Wilson and Mr. Smith should have underscored in their testimony something crucial to this debate that is the dual responsibility. It is not just the responsibility, it is the legal ramifications associated with both. If

the Commission releases proprietary information, they are in significant legal trouble, a misdemeanor. If they close a hearing inappropriately, it is also a misdemeanor. They are walking an absolute fine line. Crafting this legislation is absolutely crucial. We may err on one side or the other, the Committee can deliberate that, but the public should know we ask these people to walk on a precipitous razor for the public's benefit. This is not just, "We made a mistake." Significant penalties are associated with mistakes on either side and that is a crucial part of this debate. We need to be sensitive with where we place the scalpel.

JOESPH A. TURCO (America Civil Liberties Union of Nevada):
A couple witnesses and members of this Committee have talked about the balancing act; indeed, there are two important principles: open government and privacy. Both bills tighten up the process by making only portions of a hearing private, allowing disclosure of that information afterwards for potential judicial review and being tougher on the criteria for what is confidential. This bill strikes that delicate balance, and we are in favor.

MS. VILARDO:
Senator Townsend has been more than eloquent in describing some of the situations. The Nevada Taxpayers Association supports S.B. 448 and the recommended amendment by Mr. Smith. A bifurcated process should be the first thing done. They should determine if, in fact, the information you are going to receive is confidential. I would like to offer another amendment and will provide language. There was a discussion about the misdemeanor penalty. I want to make clear that is a criminal misdemeanor. The burden of that penalty is on the Commission and department staff. I would like to know if the Committee would consider changing that to a civil penalty instead of a criminal misdemeanor. In either case, would you please extend that penalty to interested parties in those hearings because information goes out under the assumption somebody from the Department of Taxation or the Commission is releasing information? It can be an intervenor or interested party in the case who has been given standing. What is good for the goose is good for the gander; everybody should be subject to the same penalty.

MR. WILSON:
The record should reflect if the disclosure involved proprietary information. In that event, it is possible the state could become civilly liable depending upon whether the owner of that information was damaged in some way. It is an

additional dimension we did not talk about, of which you should be aware, and a different reason for the sensitivity.

CHAIR MCGINNESS:
We will close the hearing on S.B. 448 and open the hearing on S.B. 478.

SENATE BILL 478: Makes various changes regarding the appeal of property assessments made for purposes of taxation. (BDR 32-1392)

JASON D. GUINASSO (Village League to Save Incline Assets, Incorporated):
I have prepared a memorandum for S.B. 478 (Exhibit Q) outlining our support for the changes to NRS 361 as well as proposed amended language to better accomplish the policy objective we have in mind. This bill does three things. One, it expressly authorizes a class appeal and relief to correct errors made by the county assessor that affect an entire class of property owners. Second, it provides an additional ground upon which a taxpayer can bring an action for judicial review. Finally, it provides for greater accountability within the current tax system by awarding attorney fees and costs to a prevailing taxpayer.

The first objective, to authorize class relief, comes from the taxpayers' experience since 2003-2004 in litigating a matter involving the Washoe County Assessor's unconstitutional evaluation of properties in the Incline Village-Crystal Bay area. The Nevada Supreme Court ultimately found after several years of litigation that the County Assessor had failed to follow regulations promulgated by the Nevada Tax Commission. In so doing, they violated the uniform and equal provision of the Nevada Constitution. Only 20 people got relief from that ruling on a matter that affected 9,000 people. An unconstitutional method of evaluation applied to a whole class of property owners, and only 20 people got relief. That needs to be corrected by a mechanism expressly provided within the law allowing that class of taxpayers to attack methodologies used to value their properties when unconstitutional or otherwise found infirm. Lessons learned from *State, Bd. of Equalization v. Bakst*, 122 Nev. Adv. Op. No. 116, 148 P.3d 717 (2006), do not just apply to Incline Village-Crystal Bay. If the Clark County Assessor were to go outside promulgated regulations of the Nevada Tax Commission, taxpayers in that situation could be subject to the same kinds of unconstitutional conduct. This provision takes lessons learned from a piece of litigation affecting Incline Village-Crystal Bay and provides the benefit of wisdom from that experience to taxpayers across the state.

Secondly, S.B. 478 provides additional grounds upon which a taxpayer can bring an action for judicial review. What we learned from the *Bakst* decision is the Washoe County Assessor was not following regulations. In all fairness to the Assessor, at the time, the Nevada Tax Commission had not developed regulations; they decided to use their best judgment and establish methods of the profession to come up with evaluations for the properties in Incline Village-Crystal Bay. Seventeen different assessors who evaluated various properties came up with wildly different results. The Nevada Supreme Court viewed that and said:

> Assessors, if we are going to have uniform and equal taxation, we have to all play by the same rules. The people responsible for making those rules are the Nevada Tax Commission. You cannot act unless the Nevada Commission provides some guidelines for which you can go about valuing property.

Finally, going back to providing greater accountability, the language speaks for itself. In the words of one of the county assessors, those who deal with a perceived ambiguity in the regulations or statutes to suit their own ends would think a lot harder about how they value properties if there was a greater financial consequence. Taxpayers have to bear the burden of litigation costs to show county assessors are not following the regulations, statutes and, ultimately, the Nevada Constitution in arriving at their asset values.

When we proposed the language for S.B. 478, we had in mind the objectives I just spoke about, but language is needed to make the section more workable. We did not necessarily contemplate language contained in the proposed bill when asking this Committee to consider the legislation we had in mind. We propose a few amendments in the memorandum, Exhibit Q, to deal with those issues.

The first amendment on page 2 of Exhibit Q provides a mechanism to certify a class. Within the administrative process, the county board of equalization needs to have some power to determine whether it is appropriate in certain circumstances to certify a class. This provides some control over the class process and who gets relief as a class.

Secondly, we needed to correct language. We proposed a second amendment to correct an inconsistency in the language. In section 1, we have the ability to

bring a petition as a class, but section 3 requires every person in a class sign an authorization. If enacted, that requirement nullifies the whole purpose of a class action. If we had to go out and get signatures from every single person in Incline Village-Crystal Bay for example, those 9,000 authorizations would not leave us in any better position than we are today in terms of bringing these issues to court on behalf of a class.

The third proposed amendment on page 3 of Exhibit Q makes taxpayers whole by providing fees and costs to the taxpayers who prevail and holding county assessors accountable in this process.

Finally, the fourth amendment corrects the standard applied to taxpayer petitions and makes it consistent with NRS 361.420.

SENATOR CARE:
Let me ask about class certification. The criteria are unclear to me. We have Rule 23.1 in both state and federal civil procedures regarding commonality and other factors, but the bill says "similarly situated property." That could be all houses on the same street, within a homeowners association of a same age or built by the same builder. It is not clear what similarly situated property means. Even with the amendment, what procedure would the board use to certify a class?

MR. GUINASSO:
Our position is to provide language in the statute that allows for class certification and gives the county board the authority to certify a class but has the Nevada Tax Commission provide regulations that detail certifying a class petition involving taxpayers. Taxpayer litigation is somewhat unique and needs to be addressed by those who understand the issues unique to that litigation and can provide useful guidance and restrictions on which people qualify in certain classes.

SENATOR CARE:
Let us say you have 9,000 individual appeals, but you only obtain 8,950 signatures. Does that mean there is no opt-out provision for somebody who is among the 9,000 who neither signs nor wants to be a member of the class?

MR. GUINASSO:
It would be appropriate and consistent with Rule 23. If the regulation is adopted by the Commission, an opt-out provision would be appropriate. What we do not want is an opt-in provision that requires us to get authorizations from every single taxpayer; requiring that defeats the purpose of having the ability to petition as a class in the first place.

SENATOR CARE:
Going on to the awarding of reasonable costs and attorney fees if the taxpayer or class of taxpayers prevails upon judicial review against the board of equalization, what if the taxpayer does not prevail? Is it fair for the taxpayer to pay reasonable costs and fees incurred by the board?

MR. GUINASSO:
No, because the tax provisions provide the county assessor great leverage in the process of determining and defending assessments. One overarching policy principle of allowing taxpayers to challenge those assessments provides for open government—explanations on how the government reaches its conclusions on how it taxes and ensures there truly are uniform and equal taxes applied across the board. You would not want to impose upon the taxpayers the burden of paying attorney fees and costs at the end of litigation because that deters the kind of accountability this Legislature wanted when it gave taxpayers the ability to challenge assessments by their county assessor.

CHAIR MCGINNESS:
Could you expand on proposed Amendment 4, Exhibit Q? It looks like the county board of equalization may determine the value and then the assessor reviews those changes for the previous years, is that the basic idea? They can change that and the assessor has to evaluate those changes?

MR. GUINASSO:
Yes.

CHAIR MCGINNESS:
The explanation gets into talk about taxable value versus full cash value.

SUELLEN FULSTONE (Village League to Save Incline Assets, Incorporated):
Proposed Amendment 4 may look confusing in the presentation, but NRS 361.345 already provides for what the Chair was addressing, having the

county assessor review the changes each year. We are not proposing any change to that provision of the law. The change we are proposing deals with the inconsistency between the first sentence of NRS 361.345 and the following sentence, particularly since that inconsistency is brought up by the *Bakst* decision.

The first sentence of NRS 361.345 section 1 essentially says,

> The county board of equalization may determine the valuation of any property assessed by the county assessor, and may change and correct any valuation found to be incorrect either by adding thereto or by deducting therefrom such sum as is necessary to make it conform to the taxable value.

Taxable value is the standard in the Nevada system. The Nevada system is unique in that regard from other states because it does not have a market value system for its tax; it has a taxable value system adopted in 1981 as part of a tax shift from property taxpayers to tourists paying sales tax.

The subsequent sentence says, "The county board of equalization may not reduce the assessment of the county assessor unless it is established by a preponderance of the evidence that the valuation established by the county assessor exceeds the full cash value." This creates two standards within the same statutory provision. One is the county board of equalization can reduce or add to read taxable value, and then you are telling the county board of equalization they cannot do that unless the full cash value standard is not met. The full cash value is not the standard in the statutes or established by the tax system; when you put a full cash value standard into this language, you are creating an unconstitutional double standard. We are proposing you eliminate the full cash value sentence from that provision.

MARYANNE INGEMANSON (President, Village League to Save Incline Assets, Incorporated):
The 9,000 members of the Village League to Save Incline Assets, Inc. (VLSIA) and I have been involved in a struggle for over 4 years with Nevada taxation authorities in an effort to correct illegal and unconstitutional appraisal methods used by the Washoe County Assessor to value residential properties in the Incline Village and Crystal Bay areas. After attending more then 33 workshops over a 2-year period, which culminated on August 4, 2004, updating the

Nevada Tax Commission regulations for uniform property tax appraisal methods, we thought the problem had been solved. We were wrong.

Individual petitioners in the VLSIA were forced to file petitions for appeal before 9 county and state boards of equalizations since 2003 as well as to initiate 10 separate lawsuits. On December 28, 2006, after an en banc hearing, the Nevada Supreme Court unanimously affirmed the order of District Judge William A. Maddox in favor of the VLSIA plaintiffs and ruled the appraisal methods used by the Washoe County Assessor were illegal and unconstitutional. Again, we felt the problem had been solved, and we were wrong.

Why has the VLSIA, which is a voluntary nonprofit organization, been forced to spend over $500,000 to date in legal fees, court costs, transcripts and so forth in an attempt to correct the unconstitutional actions of Nevada's taxation officials? The answer to that question is why I am here today in support of S.B. 478. Nevada's statutes and administrative codes are clear and easily understood. The problem lies in the fact there is no accountability or consequence if a state agency or employee has determined they do not want to follow the law. The laws have no teeth. The passage of S.B. 478 would correct that situation. If the laws all of us follow daily had no consequences, no one would feel compelled to stop at a red traffic light. Even though the Washoe County Assessor was told the appraisal method they were using was wrong by three county boards of equalization, two world-renowned appraisal experts, the State Department of Taxation, the Chair of the Nevada Tax Commission, two district court judges and the Nevada Supreme Court, the Washoe County Assessor still claims they are right.

Despite all our victories in the courts, the Washoe County Assessor still refuses to follow the regulations promulgated by the Nevada Tax Commission in 2004 and has stated as much in many public forums. Section 4 of the handout (Exhibit R, original is on file in the Research Library) included a quote from Thomas Sheets to the Washoe County Assessor's Office. Unless accountability is made a part of the Nevada laws, this battle for equality and uniformity in the assessment of property taxes will continue indefinitely. A demonstration of the inequities caused by the refusal of the Washoe County Assessor to use the Nevada Tax Commission's approved appraisal regulations is in section 2 of Exhibit R, where I have placed a comparison of two similarly situated properties. One is in Washoe County and one is in Douglas County. You can see the

Washoe County property is smaller, older, valued at $1.2 million less, two-thirds less land size and has less lake frontage, but its taxes are 369 percent of the Douglas County property. The amount of taxes assessed to the property in Douglas County for the 2007 tax year is about $20,000. The amount of taxes assessed to the less valuable property in Washoe County for the same year is nearly $75,000. The Douglas County Assessor provided me with all the facts pertaining to the property in Douglas County. The Washoe County property is mine. This situation is not specific to these two properties but an overall discrepancy between these adjacent counties which share the same lake, beach, sky and state but have dramatically different tax burdens.

The Nevada Constitution demands all taxation in the state be uniform and equal. It is apparent the property tax assessment imposed on the Incline Village and Crystal Bay area properties is unconstitutional and unequal. We were hopeful the attitude of the office of the Washoe County Assessor would change with the election of the new assessor. We were wrong again. I received an e-mail from one of the property owners in Incline Village recounting his experience with the Assessor's office last January. He had called to inquire about his taxes. The appraiser with whom he was speaking advised him that all land values had increased by 15 percent. The taxpayer then asked the appraiser if he was aware of the recent Nevada Supreme Court decision, to which the appraiser answered, "F@%# the Supreme Court." A copy of this e-mail is in section 3, Exhibit R. Why should the taxpayers in Nevada have to police state agencies? The reason is because there are no consequences for wrongdoing built into the statutes. The passage of S.B. 478 would level the playing field and bring accountability to state agencies and employees.

The problem of illegal and unconstitutional property taxation is currently focused on the 9,000 members of the VLSIA. However, if these ongoing legal battles continue—and Washoe County has stated they will fight the citizens of the geographical area every inch of the way—the possibility looms that the perception of illegal property taxation could spread throughout the state. In section 4, page 11, Exhibit R, is a quote from District Judge James Todd Russell directly to Deputy Attorney General Dawn Kemp and Deputy District Attorney Terrence Shea. Senate Bill 478 will add accountability to the statutes and administrative codes approved by the Legislature. If there are no consequences to ignoring the laws, we may as well not have laws. The taxation officials have shown no respect for the public, statutes, Legislature or courts.

Passage of S.B. 478 would help alleviate this cavalier attitude which is prevalent. All 9,000 members of the VLSIA urge your support of this legislation.

TODD LOWE (Village League to Save Incline Assets, Incorporated):
I came up here to add some flavor and maybe a little English to what Ms. Ingemanson has said to express the hope we had in the beginning and also the frustration. A memorandum (Exhibit S) written four years ago by Gregory L. Zunino gave us a lot of hope. It also provides a table showing why there is frustration with today's situation and why S.B. 478 is important to go forward. We need a level playing field for all situations like this.

MR. GUINASSO:
In lieu of speaking, two individuals who support the bill submit their testimonies in writing. I have testimony from Les Barta (Exhibit T).

MS. FULSTONE:
Concerning the three different areas in which we propose legislation be enacted, I will first address the additional grounds by which a taxpayer may seek judicial review. Though not really additional grounds, NRS 361.420 expresses that the assessment complained of does not comply with a regulation of the Tax Commission regarding the determination of the value of property. This is simply a reflection of the decision by the Nevada Supreme Court in the *Bakst* case. The Court recognized that in order to have a constitutionally satisfactory system of uniform taxation, you had to have uniform assessment. You could only have uniform assessment if you had assessors following uniform regulations promulgated by the Nevada Tax Commission. The Court recognized those grounds and set aside certain assessments by the Washoe County Assessor because they did not follow the regulations of the Tax Commission. Assessors are sometimes concerned this prevents them from using generally accepted appraisal practices. To the extent those generally accepted appraisal practices are not reflected in regulations of the Commission, that would be the case, but that would be the law as set down by the Nevada Supreme Court. Uniform taxation requires uniform regulation, and it requires the assessors follow those regulations.

I want to address Senator Care's concerns about the class appeal. We share those concerns as well. Without incorporating all provisions of Rule 23 of the Nevada Rules of Civil Procedure, it is important the statutes specifically allow for a class appeal. It will not be a common occurrence. In situations such as we

have experienced in Incline Village, where you have the Washoe County Assessor's unconstitutional methods apply to some 9,000 properties, rather than solicit or encourage every one of those 9,000 homeowners to file petitions and require the Washoe County Board of Equalization determine 9,000 different petitions—or alternatively to grant relief to some taxpayers who are harmed and not others—the only reasonable answer is a class petition process before the board of equalization. We tried to open the discussion about a class petition process. Whether you want the statute to require compliance with the Rules of Civil Procedure of numerosity, similarity of legal issues and other provisions is up for discussion. However it is ultimately reflected in the statute, the statute should permit a class petition in circumstances experienced by the taxpayers of Incline Village and Crystal Bay.

I also want to address Senator Care's concerns about attorney fees and costs. Does a reciprocal provision make any sense? If the taxpayer loses, should the county assessor be reimbursed for the costs? The problem is the taxpayer already pays those costs. Taxpayers pay these public officials to do their work properly to include public officials who are attorneys who represent them. The idea of the legislation is to create an incentive to the county assessor to follow the regulations of the Commission. As I was waiting, I heard the argument that sometimes the refunds are smaller than the attorney's fees. The refunds from improper assessments in these cases are not always large. It does not mean the taxpayer should be forced to pursue the refund as a matter of principle without the possibility of being made whole. In this instance again, the examples come from the Incline Village experience but are not limited to it. The laws affect taxpayers across Nevada. Assessors in Nevada sometimes face appeals from taxpayers. When an assessor makes a mistake, the taxpayer has to go to the county board of equalization, judicial review and then ultimately to the Nevada Supreme Court to get relief. There should be a way for that taxpayer to recover attorney fees and costs.

DOUG SONNEMANN (Assessor, Douglas County):
I have passed out a piece of paper (Exhibit U) with suggestions. In section 1, line 4 of S.B. 478, our suggestion is to change "current year" to "current assessment year." That would differentiate it between current tax year and eliminate that confusion. It would also match it to NRS 361.357 which is the statute that deals with most normal appeals.

CHAIR MCGINNESS:
Mr. Musgrove, do you have an amendment?

DAN MUSGROVE (Clark County):
After looking at Mr. Guinasso's proposed amendment, I ask my proposed amendment (Exhibit V) be held because my folks have not looked at his amendments. There is a section I can address. One of our biggest concerns relates to the attorney fee, the "shall" versus "may" and the fact that with any judgment, attorney's fees would have to be awarded. I can tell you, at least from our attorneys in the District Attorney's office, there could be an instance where the assessor is correct in all of his work, but a judgment of a dollar difference enacts the imposition of attorney's fees.

MR. SONNEMANN:
The second item in my proposed amendment, Exhibit U, gives an appellant the option to opt in. I would not want to have to opt out if it were to include me.

This is not on my proposed amendment, but it was brought up by the other folks. On S.B. 478 page 4, section 4, subsection 4, the addition requested to paragraph (h) is nearly impossible for the Nevada Tax Commission or the Legislature in statute to include every single issue. While we understand the concern here, a certain amount of appraisal is subjective. We try to be objective, but you cannot legislate every possible decision.

Finally, section 4, subsection 7 is good as it stands now and gives the discretion to the courts. We elect them to make their decisions and with the permissive "may" would allow them to do their job.

To address some concerns from the Incline Village-Crystal Bay residents, we would offer up subsection 8 from Exhibit U which says, "The court may award costs of suit and reasonable attorney's fees to the prevailing party for any suits brought under this section." That would allow the courts discretion.

TERRANCE SHEA (Washoe County District Attorney's Office,):
I am here on behalf of the Washoe County Assessor. The primary purpose of my visit was to talk about the wording of S.B. 478. If the members of the Committee have questions raised by the preceding comments, I would be happy to answer those.

SENATOR AMODEI:
I am looking at the statements attributed to Mr. Sheets and District Judge Russell that are germane to this situation. We have a district court judge and the chair of the Nevada Tax Commission expressing concern about these areas, and here we are with legislation after the Nevada Supreme Court and equalization boards. I would like something from the Washoe County Assessor's Office that gives me a feel for the atmosphere with respect to this part of the county, the equalization process and why we are looking at legislation from folks who, though apparently successful in the equalization and litigation process, now feel that has not provided enough protection for what they have allegedly experienced. Balance the record for me if you can.

MR. SHEA:
The *Bakst* case is at the center of this controversy. It started with the reappraisal effort by the Washoe County Assessor's Office for the 2003-2004 tax year. The law in effect at the time included a provision in NRS 361.260, subsection 7. The statement of the law, provided by this Legislature, was that the county assessor shall establish standards for the appraisal and reappraisal of real property. Based on that, it was believed that in situations not addressed in regulation or statute the county assessor still needed tools to reach full taxable value for the property within the county and had the authority from the Legislature to adopt those standards.

Seventeen taxpayers came forward and the Washoe County Board of Equalization decided the County Assessor did their job and did it right. That was appealed by the taxpayers to the State Board of Equalization. The State Board did an interesting thing that year in 2003. There was a special hearing on those four disputed methodologies: a view classification system, tear downs, time adjustments and beach classification. On May 30, 2003, they had a hearing to decide whether these methodologies were actually valid and properly used by the Washoe County Assessor. After that hearing, on June 30, 2003, the State Board decided these were appropriate and properly used methods by the Washoe County Assessor.

The taxpayers then asked for judicial review, and it was before District Judge Maddox who decided the four methods were not adopted in a regulation pursuant to the Nevada Administrative Procedure Act. He found the Washoe County Assessor subject to the Administrative Procedure Act; because of that, he could not use those procedures. We did not agree. We did not think the

County Assessor was such an official because the statute is pretty clear. We appealed to the Nevada Supreme Court. The Supreme Court pushed that reason aside but adopted the result ordered by District Judge Maddox. District Judge Maddox ordered tax refunds for the 17 individuals on their 18 parcels and based the decision on Article 10, section 1, the uniform and equal clause. It was on the basis of if it is not written down in a regulation, how can we have uniform and equal taxation? The Supreme Court interpreted NRS 361.260, subsection 7 to only apply in a limited area, and that would be how far in the past you can collect data on comparable sales and use those to either reappraise or adopt factoring. The Supreme Court found that was not a basis for the Assessor to develop standards on their own and the Nevada Tax Commission had not provided sufficient regulations for the county assessors. That is why the four methods were declared invalid and unconstitutional. They have not been used since then because reappraisal methods are not used during factoring years.

Since the 2003-2004 tax years for the Incline Village-Crystal Bay area, they have each been factored forward. In the 2004-2005 tax year, the Tax Commission adopted a land factor of 1.0. The next year was 1.08, the year after that was 1.02 and the present year is 1.15. The idea that they are refusing to listen to the *Bakst* decision is overstated. As far as that Nevada Supreme Court decision, Washoe County has complied in every particular.

With regard to the comment by District Judge Russell, I can assure you the State Board of Equalization is finding plenty to grapple with in going forward from the *Bakst* decision. The decision applies to 17 taxpayers by the clear language of that case. The Nevada Supreme Court ordered tax refunds for those folks, and the Washoe County Assessor does not have the authority to expand on that order. What the State Board of Equalization is grappling with—and an April 10 meeting of the State Board about the 9,000 parcel rollback by the County Board of Equalization—is what to do with that, whether those assessed valuations are valid as assigned by the Assessor and how the *Bakst* decision impacts those values, if at all. Was it only 17 parcels, which does not really raise an equalization issue, or did the County Board overstep its authority by rolling back to 2002-2003 and ignoring the intervening Tax Commission land factors? Some incredibly complex taxing and assessment issues are still unanswered. To say the Washoe County Assessor has violated the Nevada Constitution is easy, but to say where we go from there is not so easy.

SENATOR AMODEI:
Do you think S.B. 478 is needed to help clear up some of that for you?

MR. SHEA:
I do not see S.B. 478 as clearing up any of the issues coming forward from the *Bakst* decision.

SENATOR AMODEI:
Are you going to submit any amendments to help clear some of that based on your testimony?

MR. SHEA:
I will be glad to do that, Senator, but I like the current statutes.

SENATOR AMODEI:
I just heard testimony that about 8,977 parcels are in limbo somehow, and nobody knows how to deal with it.

MR. SHEA:
That is what we are asking the State Board of Equalization to do right now.

SENATOR AMODEI:
The Governor is their father and the Legislature their mother since they created them; they are not constitutional so that is something to keep in mind.

MR. SHEA:
I was involved in the class petition filed in the 2007 Washoe County Board of Equalization. That experience demonstrates the property with the proposed amendment to allow class actions in front of the County Board of Equalization. While in private practice, I prosecuted two class actions; the County Board of Equalization is not an appropriate venue to be making the complex decisions that go along with class representation. The first thing you have to keep in mind is the County Board of Equalization only meets for six weeks. To provide an opt-in or opt-out period for class members will probably take six weeks itself because you have to give people enough time to respond to that and advise them of their rights. Rule 23 and the large body of case law that surrounds it are designed for one thing, and that is to protect the substantive and procedural due process rights of the proposed class members. The County Board of Equalization in asking a lay body to make those types of decisions is

inappropriate. We are asking too much of the volunteer members of that Board. The VLSIA has already taken advantage of the class process in effect. Once you get past the State Board of Equalization, you can ask for judicial review, and in a complaint, you can ask for class certification of an issue. That was accomplished in the 2005 tax year when approximately 1,120 taxpayers opposed the 1.08 land factor adopted by the Nevada Tax Commission. They filed a complaint and requested a certification by District Judge Charles McGee. He agreed with them and granted class certification. In a further proceeding in that case on a motion made by myself to dismiss the case on a jurisdictional basis, District Judge McGee did not dismiss the case but remanded it to the County Board of Equalization for individual parcel hearings as to whether or not the 1.08 factor was appropriately applied. What District Judge McGee had in mind was the role of the County Board of Equalization is to consider the facts surrounding individual parcels and whether they have been properly assessed. For a board that only meets six weeks, that is as much as you can ask. I ask this Committee to not include the class vehicle for county board proceedings.

JOEL BENTON (Carson City District Attorney's Office; Carson City Assessor's Office):
In addition to concerns regarding class action and attorney's fees already set forth, we also have concerns about the language of section 1, subsections 1 and 2. Subsection 1 basically provides that any owner of property who is aggrieved may appeal the evaluation. It does not, though, define aggrieved or set forth upon what grounds a person can be aggrieved. For example, NRS 361.420, subsection 4 lists grounds upon which a suit can be filed, but there is no similar list for filing appeals before the county board of equalization. That goes into our concerns about subsection 2 which sets forth the requirements for the appeal. As the language exists, none of the requirements provide the grounds upon which the appeal is filed. A county board of equalization would almost find it impossible if a person is aggrieved if they do not know upon what grounds someone claims aggrievement. I have also submitted a letter further stating our position (Exhibit W).

SENATOR TOWNSEND:
It is important for this Committee working through the process, evaluations, assessments and various boards the taxpayers go through to understand the mechanics of this. When the Nevada Supreme Court makes a ruling, if the taxpayer prevails, whether it is simply the 17 or ultimately under the uniform and equal statute, it ends up being 9,000 parcels, a significant number. It could

be approximately $13 million plus interest from the current fiscal year's budgets, which is a significant number in Washoe County. Start with the plaintiffs in this case, which were the 17 original property owners, and consider the potential implications if you apply uniform and equal. Mr. Shea contends the Board did not have the authority to say those 17 under the decision could automatically carry over to the 9,000 property owners. That is a legitimate legal question. Those individuals knew that 9,000 parcels could potentially be affected by the decision. In the hierarchy of Washoe County—starting with the chair of the County Commission working through the city or county manager to the District Attorney's Office as it works through that group—who made the decision to go forward as opposed to settle or try to find some resolution? Did they put into their thought processes what is it going to cost if you lose? That $13 million comes out of everybody else's coffers—that could be fire, police, schools, flood, whatever. Did anyone ever ask that question? If not, why did they not ask it? I would like to know how far up the chain it went relative to a decision not to find a solution and go to litigation.

LISA GIANOLI (Washoe County):
I will have to go back and get that answer. I do not know all the specific of all those decision points, who weighted in and what kind of fiscal analysis was done as to the impacts. You are clear that every taxing entity countywide has to cough that back up if rebated.

SENATOR TOWNSEND:
I do not have the benefit of our two legal counsels who sit on this Committee, but I have been in enough litigation to assure you that one of the things you do as a plaintiff or defendant is assess what happens if it all goes against you. A good legal counsel starts from that premise and then you weigh that as you move forward.

CHAIR MCGINNESS:
We close the hearing on S.B. 478. We planned on a work session but will do that at the beginning of the next meeting. We are adjourned at 4:31 p.m.

RESPECTFULLY SUBMITTED:

Josh Martinmaas,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: