

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

**Seventy-Fifth Session
May 7, 2009**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:49 p.m. on Thursday, May 7, 2009, 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/75th2009/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
Assemblywoman Marilyn Kirkpatrick, Vice Chair
Assemblyman Paul Aizley
Assemblyman Bernie Anderson
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblywoman Ellen Koivisto
Assemblywoman Sheila Leslie
Assemblyman Richard McArthur
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry Jr. (excused)
Assemblyman Don Gustavson (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Randall C. Robison, North Las Vegas, Nevada, representing Nevada Association of School Superintendents, Reno, Nevada
Ben Zunino, Superintendent, Eureka County School District, Eureka, Nevada
Bob Burnham, Member, School Board, Eureka County School District, Eureka, Nevada
Bjorn Selinder, Board of Commissioners, Eureka County, Eureka, Nevada
Laura Granier, Lionel Sawyer & Collins, Reno, Nevada, representing Fronteer Development Group, Inc. (USA), Reno, Nevada

Chair McClain:

[Roll was called.] We have one bill to be heard today, and then we will have another bill in work session. We will start with the hearing on Senate Bill 61.

Senate Bill 61: Revises provisions governing the authorized uses of money in a school district mitigation fund. (BDR 32-504)

Randall C. Robison, North Las Vegas, Nevada, representing Nevada Association of School Superintendents, Reno, Nevada:

With me today are Ben Zunino, Superintendent of Eureka County School District, and Bob Burnham, School Board Member, Eureka County School District. Senate Bill 61 is a bill that these two gentlemen and I have worked on for a number of sessions now. It essentially takes an existing mitigation fund and expands the allowable uses of that fund.

I would make one correction. Your copies of the bill say it is on behalf of Eureka County, but it is actually on behalf of the Eureka County School District.

Ben Zunino, Superintendent, Eureka County School District, Eureka, Nevada:

The four counties that will be affected by this are Storey County, Lincoln County, Esmeralda County, and Eureka County, which are the smallest counties in terms of population. I have provided you with letters from Eureka, Storey, and Lincoln Counties (Exhibit C). I just talked with Mr. Aumaugher, the Superintendent of the Esmeralda County School District, and he said his board voted to support this as well.

In Eureka County, in addition to that letter, you have a graph ([Exhibit D](#)) that shows the volatility of our ad valorem or Net Proceeds of Minerals Tax revenue. In Eureka County, it is difficult to find teachers or staff in general. We are competing with the mines.

When I first came to Eureka County, we had to give up seven teachers, which was about one-third of our total teaching staff in the county, because the price of gold went down. Our assessed valuation had gone from \$932 million in 1996 to \$511 million in 2002, which is a 45.2 percent decline. Then, from that \$511 million in 2002, it dropped to \$323 million by 2003, a decline of 36.8 percent. From 1996 to 2003, we went from \$932 million to \$323 million, which is a 65.3 percent decline in revenue.

Not only were we affected by the ad valorem, but our student population dropped. As a result of that, we had no way of generating revenue. We had to let seven teachers go.

Last year, we interviewed 22 teachers for a science position. Of the 22, some did not want to live in Eureka. Some came, and we did not want them to be in Eureka. As a result, I had to call a friend of mine who is a retired science teacher, and she came for the year. We are still looking for a science teacher.

This last week, I was at a career fair at the University of Nevada. We found two possible special education teachers we had been looking for. They had been laid off in Washoe County. We did not find anybody to teach science.

Our purpose behind this bill is to help us in the downturn we know is coming. Right now, gold is doing pretty well, so we hope to be able to put some funds away. When the price of gold drops again, we can draw upon those funds to keep our teachers and staff. It is very difficult to compete with the mines when they are paying \$27 an hour and we are offering \$13 or \$14 an hour for a secretary, custodian, or bus driver.

The one thing we do have is our relationship with our employees. Our pay scales are among the highest, if not the highest, in the state. We do honor our people. We want to be able to keep them and offer them positions. As I said, in 2002 we lost a tremendous number of teachers, which we have not been able to recoup.

Bob Burnham, Member, School Board, Eureka County School District, Eureka, Nevada:

I have been on the Board for four years. I have a seat that my wife previously held for eight years. She finally got tired and told me it was my turn.

If you will look again at that ad valorem revenue graph, from 1996 to 2003 it went from over \$8 million to \$2 million. That is a 75 percent loss in those categories of funding. My wife was the Board Chairman at the time we were approaching the bottom. I remember her coming home almost in tears on some occasions because of all the people with whom we were going to have to part.

As Mr. Zunino said, we lost a sizeable number of people. We lost about 40 percent of our high school teachers at that time. I particularly remember one young special education teacher, the kind that any district in the state would want to hold onto for his entire career. He had been there for three or four years. He was an exemplary young man, but he was at the bottom of the seniority scale. We lost him, and we are not going to get him back. We were lucky to get him in the first place, and it is unlikely we will ever be able to replace somebody like that.

Anybody who is a business man, a public servant, or a public official, if he is wise and prudent, tries to prepare in good times for the less-than-good times that inevitably follow. Our purposes with this bill are to be able to support our program on a long-term basis and to have a sustained education program that does not rise or collapse every time our revenue stream changes.

As Mr. Zunino said, we try to take good care of our people. Now we want to go on to the next step in that program by trying to create more job security in our school district. The key to that is having a stable revenue stream. The biggest purpose of this bill is to provide us with some stability so we are able to maintain our program in the long-term.

Bjorn Selinder, Member, Board of Commissioners, Eureka County, Eureka, Nevada:

I am pleased to express the Board's support for S.B. 61. I think Mr. Zunino mentioned there was a letter in your packet, dated some time back, in support of the bill. Since the bill has not changed, I am happy to suggest they continue to support it.

Chair McClain:

Thank you. You just want to expand the things you can use that money for, is that right? How much money is in that fund on average?

Ben Zunino:

There is none right now.

Chair McClain:

So you had to use it already?

Ben Zunino:

Yes, we did. When I first came, we had a situation in which the Board decided to use that money to pay off the loan on Crescent Valley Elementary School. As a result, we had to empty that fund. We have not put any more money into it because there is no way we can get it out unless we have a fire or disband the whole fund.

Chair McClain:

Is any money going to be going into the fund?

Ben Zunino:

We hope so, with your approval.

Assemblywoman Kirkpatrick:

Is this basically a repeat of Assembly Bill No. 291 of the 74th Session? Did we not have this discussion then?

Also, hypothetically speaking, if Assembly Bill 360 does pass, which allows you to offset the Payment in Lieu of Taxes (PILT) funds, how would that affect this, if at all?

Randy Robison:

I do not believe there is any interplay between PILT and what this fund does. The way this fund works is the county actually allocates a predetermined percentage, pursuant to statute, to the school district. Right now, the school district can only put that money in this fund and can only use it for specific purposes. We are simply expanding the allowable uses of that fund.

Assemblywoman Kirkpatrick:

The only reason I ask is that A.B. 360 permits you to set up a special district to allow you to offset a portion, as Utah does, so you can expand your education fund. This may not apply. I would just be curious to know.

Randy Robison:

I will track down that information and get a response to you as soon as possible.

Assemblyman Goedhart:

Mr. Zunino, it looks like, instead of applying this to all counties, you have targeted it toward the counties with the smallest populations. I know that because of the way the Net Proceeds of Minerals Tax works and because of different investments and the opening or developing of different mines, Lander County took a big hit a couple of years ago. Even a county like Lander

could probably benefit from something like this. Was there a reason why you kept it to counties at the 5,000 population level and did not raise the threshold to allow more counties to participate?

Ben Zunino:

We tried that last Session. Some counties were interested, but some issues came up. So, we felt this was the threshold that would affect us the most. We are the smallest by far.

Assemblyman Goedhart:

How many people are currently in Eureka County?

Ben Zunino:

There are about 1,300 to 1,500.

Assemblyman Goedhart:

So by keeping the threshold very low, you thought you would engender less opposition?

Ben Zunino:

That, and we receive no Distributive School Account (DSA) funds. If we were in the DSA, we would have some sort of steady flow of income. What we end up doing is taking money that is nonrecurring. You can see the volatility on the graph. That becomes our operating fund, and that is not a good way to do business.

We went before the Tax Commission to contest some of the deductions that were being asked for through them. We were almost chastised because we did not have a way of saving money. The woman who spoke with us asked why we did not save money and why we did not plan ahead. We have been trying to do that, and that is the thrust behind this bill.

Assemblyman Grady:

For those of you who may not be familiar with Eureka, everyone talks about Elko and its mines, but, in reality, many of the mines are in Eureka County. That is why they do not get part of the DSA. They are basically on their own from the Net Proceeds of Minerals Tax. There is a unique situation. I think it is the only county in the state that does not receive DSA funds.

Assemblywoman Koivisto:

Instead of the DSA, your schools are supported by the Net Proceeds of Minerals Tax? [Mr. Zunino confirmed that.] If you do not use all of that funding in one year when times are good, what happens to it?

Ben Zunino:

It goes into our ending fund balance.

Assemblywoman Koivisto:

Can that roll over? [Mr. Zunino said it could.] What is your per-pupil funding?

Ben Zunino:

It is pretty high right now, to be honest with you. If we were to receive DSA, it would be around \$7,000 a student. However, we do not receive that. We receive money from the mines, and we have the local school support—when the mines make a big purchase, we get a percentage of the tax. Right now, we are getting \$24,000 a student. If we received DSA, we would be getting a total of about \$30,000 a student. That is driven by our small number of students. We have around 250 students in our entire school system.

Assemblywoman Koivisto:

If you are able to roll this ending fund balance, and you have that money, then you already have a mitigation fund.

Bob Burnham:

By state statute, there is a limit to how much we can put away at any given time. There are use-it-or-lose-it provisions. There are limits on how we can put money away, hang onto it, and use it later.

Assemblyman Anderson:

I want to make sure I understand. If we were to adopt this, it would give you the opportunity—since you are using the Net Proceeds of Minerals Tax, and someday those minerals could be depleted—to bank some dollars for some potential future need. You do not have the student population to go with the very rich mine you have, because I believe Elko County has those students. This would still allow you to keep your school open if we adopted this, and you would be able to set up the account. If not, you will be reaching out to the state, so it is in the state's best interest to do this in order to allow you to stand on your own after the mines run out. [Mr. Zunino confirmed that.]

Assemblyman Grady:

If they have an ending fund balance, they can work that into the budget. If they put that money into the mitigation fund, it is almost impossible to get out. What they are really asking to do is to be allowed to set up their own rainy-day fund so it can be used down the road if necessary.

Chair McClain:

Are you also covered by the 6 percent increase allowed for county governments, where your budget cannot go beyond 1.06? Are school districts like that?

Bjorn Selinder:

I am not aware of whether that can be done. I would be happy to look that up if you would like, though, and get back to you.

Chair McClain:

I can find out. I was just kind of curious.

Bjorn Selinder:

I would call your attention to the precipitous rise and fall of the graph that was handed out. From year to year, when you cannot tell how much revenue you are going to have, it does not matter what kind of ending fund balance you have. If you do not have the resources to sustain the operating budget, you need something on the order of a rainy-day fund to absorb that fluctuation.

Assemblyman Anderson:

Populations will change as a result of the 2010 National Census. While there may be at least a small population increase in Eureka, what will happen? Will the 5,000 population cap still include the four counties mentioned here? Storey County has a potential for exceeding 5,000. Does Mineral County not fit in?

Ben Zunino:

Mineral County could because the population there is actually declining. Pershing County is declining as well. I do not know the population projections for the next census.

Assemblyman Anderson:

But Eureka County will definitely not be over 5,000?

Ben Zunino:

No, our population is between 1,200 and 1,500. If the new mine comes in, which is questionable at this point, their projected employment is 400 to 450 people. That would increase our population by roughly 1,000. We would still be under the 5,000 threshold.

Assemblyman Goedhart:

That would be General Moly, Inc.'s Mount Hope project. We will have to see what the future is for that. Things are not looking good for General Moly and molybdenum right now.

Earlier in your testimony, you talked about taking some of the money in the fund to pay off a loan on an elementary school. Was that because you had extra money you could not save for the future, so you went ahead and paid off an outstanding debt? Was that money not being provided to the school from ad valorem property tax?

Ben Zunino:

That is a good example. There was actually a plan to run out of money. This happened within six months of when the Board knew they were going to run out of money because of the decline. In 1996, Eureka County was looking really good and gold was doing well. Six months later, it had declined. Then we began our recession, even though the rest of the state was not in a recession yet.

The School District had not tried to pass a bond issue. They had taken out a loan to build Crescent Valley Elementary School. At that time, everything was looking good. Then the bottom fell out of our economy.

I approached the Board to look at their cash flow. We had \$250,000 going out twice a year to pay that loan, and we had several years left. We took that mitigation fund that had \$500,000 in it, along with some ending fund balance, and paid off that loan. Not having that money going out increased our cash flow so we could keep things going. We were able to stabilize. Then, over time, the price of gold began to rise again, and we were all right.

Chair McClain:

Does anybody else have any questions? [There was no response.] We will close the hearing on S.B. 61. What is the pleasure of the Committee?

ASSEMBLYMAN GRADY MOVED TO DO PASS SENATE BILL 61.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

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

Chair McClain:

We have one more bill, and that is Senate Bill 276 (1st Reprint).

Senate Bill 276 (1st Reprint): Makes various changes concerning land sales agreements and compliance with the real property transfer tax. (BDR 32-724)

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

This bill, sponsored by Senator McGinness, was heard by this Committee on April 28. The bill amends various provisions of *Nevada Revised Statutes* (NRS) to establish the definition of land sale installment contract to ensure the Real Property Transfer Tax (RPTT) is paid on these transactions and establishes certain reporting requirements for these contracts. The bill also includes provisions in statute that would require the owner of a parcel to submit affidavits regarding the payment of the RPTT and compliance with the reporting requirements for land sale installment contracts before the local government approves certain documents relating to the division of the parcel.

Senator McGinness gave introductory remarks on the bill indicating he had introduced the bill on request based on concerns that land sale installment contract transactions often escaped payment of the RPTT. Laura Granier of Lionel Sawyer & Collins testified in support of the bill, providing an overview of the bill and a brief explanation of land sale installment contracts. She noted that conflicts had arisen as a result of transactions in rural Nevada where persons had purchased land with existing conditions or encumbrances that had not been disclosed by the seller.

In these instances, there were few remedies under state law for a buyer who had been victimized as a result of these transactions. Ms. Granier also noted that since these contracts are typically not recorded, the RPTT is not paid as part of the transaction, and foreclosure laws, which would otherwise apply in the event of delinquency or default on real property, do not apply to these contracts.

There was testimony in support of the bill from Lisa Corrado, from the City of Henderson; Ted Olivas, from the City of Las Vegas; and Carson City Clerk/Recorder Alan Glover. They noted the bill would go a long way toward collecting the RPTT on these contracts, making sure these contracts are recorded, and making sure the protections granted concerning foreclosures and delinquencies would apply to these contracts.

Concerns about this bill came from the City of Sparks. Rob Joiner and Andy Fuller testified in opposition to sections 10–13 of the bill, which would add affidavit requirements within certain provisions of Chapter 278 of NRS regarding the filing of certain maps. Mr. Fuller, the City Surveyor, noted the RPTT is paid at the time of conveyance of property and not at the time of creation of the property under Chapter 278 of NRS. He felt the addition of these affidavit requirements was not only inappropriate but would cause an undue burden on local government.

In response to these concerns, Ms. Granier provided Fiscal Analysis Division staff with a set of proposed amendments to the bill ([Exhibit E](#)). In the relevant sections—sections 10, 11, 12, and 13—at any point where it mentions that the affidavit shall state that the subdivider or the person making the application "has made provision," the wording is changed to "shall make provision." This should show that payment of the RPTT is a future event to occur after the recording of that document.

The other amendment proposed to the bill was originally submitted at the hearing on the bill. It would amend section 8 of the bill to remove subsection 2 based on concerns that had been conveyed by Kathy Burke, the Washoe County Recorder. She had indicated she felt these particular provisions were redundant, so they were asking to strike them from the bill.

Based on conversations between Ms. Granier and the Chair, as well as with Fiscal staff, it is our understanding that all parties and stakeholders on this particular bill are comfortable with these particular amendments. However, if Ms. Granier wishes to confirm this, she is more than welcome to do so.

Chair McClain:

So, Ms. Granier, you talked to everybody involved and this is what you came up with?

Laura Granier, Lionel Sawyer & Collins, Reno, Nevada, representing Fronteer Development Group, Inc. (USA), Reno, Nevada:

Yes, that is correct. I got back to the stakeholders with this proposed amendment, and they have all signed off on it.

Chair McClain:

Just what does changing the wording from "has made" to "shall make" do?

Laura Granier:

This provision is really just another layer of enforcement. When applicants go to the local government to try to get approval to create smaller parcels that are

sometimes sold over the Internet, they will provide an affidavit to the local government that says they know they must comply with the recording, disclosure, and tax requirements. The tax is to be paid upon conveyance.

The change in tense means that the applicant will be promising future compliance rather than stating they have somehow already made provision for that future compliance. It alleviates a potential burden on local governments to evaluate whether a provision that has already been made is satisfactory.

Assemblyman Anderson:

What is the penalty if they fail to fulfill the promise that has been made?

Laura Granier:

A different provision in section 14 of the bill makes it a deceptive trade practice to fail to make the disclosures or pay the transfer tax.

Assemblyman Anderson:

Who has the responsibility of following through to make sure it is completed, following the trail to make sure there are some teeth in this requirement? Is it the local governments, the county recorders, or whom?

Laura Granier:

We believe there are actually several layers of compliance checkpoints. The county recorders will, of course, require that the transfer tax be paid when the seller shows up to record the installment contract. If the seller does not do that, then the Attorney General's Office and the local officials will have the authority to prosecute under the Nevada Deceptive Trade Practices Act.

In addition, I believe the local governments will not have an obligation to follow through to make sure applicants have complied with what they promised in the affidavit. However, they certainly could consider that when, as is often the case, these applicants are serial applicants who come back again and again for future approvals.

Assemblyman Anderson:

How do you intend to make the local governments and other responsive agencies aware of this new obligation to follow through?

Laura Granier:

That is a good question. We certainly would be happy to prepare bullet points to be provided to local agencies about the new affidavit requirement.

Chair McClain:

I was just asking Legislative Counsel Bureau (LCB) staff if they notify people of new laws that affect them. However, I am sure with 900 lobbyists here, they are going to find out.

Laura Granier:

Fortunately, we had a great working group that included many of the local governments.

Chair McClain:

Are we considering both pages of amendments, the one from today and the one from April 28?

Michael Nakamoto:

I believe that is correct. I do not believe the amendment submitted today would negate the necessity for the other amendment, as they are for different sections of the bill.

Chair McClain:

Do you agree with the premise behind the amendment to section 8?

Michael Nakamoto:

Based on my review and the testimony that was given, I believe it could potentially be redundant.

Chair McClain:

Do we need to run that past the Legal Division to make sure? We will close the hearing on S.B. 276 (R1). We can take a motion to Amend and Do Pass that includes that amendment, but I will have you check on that.

ASSEMBLY ANDERSON MOVED TO AMEND AND DO PASS
SENATE BILL 276 (1ST REPRINT) WITH THE AMENDMENTS TO
REMOVE SUBSECTION 2 OF SECTION 8 AND TO CHANGE "HAS
MADE" TO "SHALL MAKE" AND ADD THE LANGUAGE, "BY THE
APPLICANT OR ANY SUCCESSOR INTEREST" IN SECTIONS 10,
11, 12, AND 13, WITH THE CAVEAT THAT SUBSECTION 2 OF
SECTION 8 IS GENUINELY REDUNDANT AND NOT NEEDED.

ASSEMBLYWOMAN LESLIE SECONDED THE MOTION.

Chair McClain:

Is there any discussion?

Assemblyman Anderson:

I am sure that the Legal Division will also want to review the suggested language of the proposed amendment in the document dated today, and they will make sure it is all in agreement.

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

Chair McClain:

Who wants to do the floor statement on this one?

Assemblyman Anderson:

I would be happy to.

Chair McClain:

Well, unless something extraordinary happens in the Senate, we do not have any more business. I am so used to sitting on budget subcommittees and closing budgets that I never asked for opposition to that last bill. Have a nice next week off unless you hear from me. We are adjourned [at 2:30 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: May 7, 2009

Time of Meeting: 1:49 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>S.B. 61</u>	C	Ben Zunino	Letters from the Eureka County Board of Commissioners, the Lincoln County School District, and the Storey County School District
<u>S.B. 61</u>	D	Ben Zunino	Graph: Ad Valorem Revenue—Eureka County School District
<u>S.B. 276</u> (R1)	E	Michael Nakamoto	Proposed amendment