

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

**Seventy-Fifth Session
March 31, 2009**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:35 p.m. on Tuesday, March 31, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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
Assemblyman Don Gustavson
Assemblywoman Ellen Koivisto
Assemblywoman Sheila Leslie
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry, Jr. (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10
Assemblyman William Horne, Clark County Assembly District No. 34
Assemblyman James Settlemeyer, Assembly District No. 39

STAFF MEMBERS PRESENT:

Russell J. Guindon, Senior Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary

OTHERS PRESENT:

Launce Rake, Communications Director, Progressive Leadership Alliance
of Nevada, Las Vegas, Nevada
Andy Belanger, Management Analyst, Southern Nevada Water Authority,
Las Vegas, Nevada
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO,
Las Vegas, Nevada
Constance Brooks, Senior Management Analyst, Administrative Services,
Office of the County Manager, Clark County, Las Vegas, Nevada
Samuel Scire, Assistant General Manager, Clark County
Water Reclamation District, Las Vegas, Nevada
Wes Henderson, Government Affairs Coordinator, Nevada Association of
Counties, Carson City, Nevada
Maureen Brower, Political and Legislative Advocate, Southern Nevada
Home Builders Association, Las Vegas, Nevada
Phil Stoeckinger, Director, Finance Department, City of North Las Vegas,
North Las Vegas, Nevada
Randy Robison, North Las Vegas, Nevada, representing the Virgin Valley
Water District, Mesquite, Nevada
Carole Vilardo, President, Nevada Taxpayers Association, Carson City,
Nevada
Barney Rabold, Deputy Director, Department of Utility Services,
City of Henderson, Henderson, Nevada
Dino DiCianno, Executive Director, Department of Taxation
Bryan Wachter, Deputy Director, Retail Association of Nevada,
Carson City, Nevada

Chair McClain:

[Roll called. Opening remarks.]

We will start with Assembly Bill 321.

Assembly Bill 321: Temporarily requires the diversion of a portion of the proceeds of an optional sales and use tax imposed in certain counties to the State to mitigate reductions in state revenue resulting from the current economic downturn. (BDR S-646)

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10:

[Read from prepared testimony ([Exhibit C](#)).]

These payments are made monthly. They average at least \$6 million or \$7 million a month. They will continue for many years unless this bill manages to divert them to the state to help reduce the budget deficit.

[Continued to read from prepared testimony.]

Today, a Las Vegas newspaper says that they are anticipating another \$85 million reduction in the property tax revenue that the county needed. That happens to be almost exactly the amount that was paid to the Southern Nevada Water Authority (SNWA) during fiscal year 2008. It seemed interesting to me that this funding could be used to substitute—as well as next year's amount—for lagging proceeds that are putting the county in a terrible squeeze.

[Continued to read from prepared testimony.]

That is my statement and description of why this bill has been brought forward.

Launce Rake, Communications Director, Progressive Leadership Alliance of Nevada, Las Vegas, Nevada:

We are an organization that has occasionally criticized the policies of the Southern Nevada Water Authority (SNWA) and, when we talk about the financing for the SNWA and its sister agency, the Las Vegas Valley Water District (LVVWD), it is a difficult and complex issue, in large part because the agency does some laudable things, not the least of which is that it provides water to about 2 million people. We have seen the agency take steps towards conservation measures in the last six years, and again, that is laudable. I think they could do a lot more with conservation, but I would also like to note that we support the SNWA's plans to build a third straw to Lake Mead and continue delivery of water from the Colorado River, which is our primary resource. But, it is also important to note that the agency spends a lot of money and plans to

spend even more money, literally billions of dollars, on public policies that seem designed to placate and reward members of its own staff, growth related industries, and powerful contractors. Some of that has recently been spent on buying up ranches and silencing potential critics of its policies in the Spring Valley of the rural Great Basin. The agency has spent at least \$80 million so far buying up ranches at grossly inflated and unappraised prices in the effort to shut off critics in rural Nevada. It is fair to say that money flows through the agency like water through a net.

The SNWA has an army of lobbyists and public relations (PR) officials here in Las Vegas, in Carson City, in rural Nevada, in Salt Lake City, in Washington, D.C., and I am sure in many other places. For the SNWA, money is no object when it comes to influencing public opinion and your opinion, too. The SNWA is, I remind you, a public utility. It is a monopoly with no competition, yet I believe it spends more on public relations than our biggest corporate citizens. The employees of R&R Partners, just one of the companies that ratepayers are funding through the water agency, are very persuasive and very effective, but they do not come cheap. R&R Partners is just one of the many marketing companies hired by the agency to bolster its own in-house army of spokesmen, lobbyists, and lawyers. According to a recent story by George Knapp with KLAS TV, the hired guns came with a cost of at least \$5.4 million last year, and probably a lot more.

Katz and Associates, another very accomplished PR firm, has had two full-time staffers devoted to the water authority for 15 years or so. The company pulls \$650,000 annually from the agency, or rather from the public. One of the accomplishments touted by Katz & Associates with their work with the agency was training agency employees in cubicle etiquette. I have to ask, how many teachers could we hire for \$650,000 annually? Will they need a course in cubicle etiquette?

In another example of the SNWA marketing efforts, the agency spent public money on thousands of television ads over the last year telling those of us who live in Las Vegas that the water tastes good. I suppose that is a matter of opinion and taste, but I think when you are talking about this kind of silly spending, there is something wrong. There are terribly important needs in southern Nevada: children are going hungry and without medical care, veterans are homeless, the schools and infrastructure desperately need investment, and public safety is crying out for additional dollars. Let us put the money where it is needed.

I am supporting Assemblyman Hogan's important bill and I hope you will, too.

Assemblyman McArthur:

I think you said that the diversion of this tax would be stopped in 2015. Did you say that? I cannot find anything like that in here.

Assemblyman Hogan:

Yes. This bill does provide that the diversion of the annual receipts will run from the effective date of the bill until 2015.

Chair McClain:

It is on page 2, lines 25 and 26.

Assemblyman McArthur:

Money will just be going into the treasury without a provision to pay it back to the water district? It will just be diverted until 2015?

Assemblyman Hogan:

That is correct. It would be diverted to the more crucial and compelling needs of education, health care, et cetera; some of the programs that are expected to be cut if we have to sustain the Governor's proposed cuts. It is a matter of trying to prioritize. We have a sum of money that has been set aside for what is called infrastructure—but we do not know exactly what it is for—so we are looking at today's needs saying that, today and for the short term until we recover from this economic recession, these funds ought to be used for some of the very urgent things that we are concerned about. We will have time to restore or collect more funds. For example, in yesterday's paper, the SNWA asked for a full one-year delay in some of the hearings that are preliminary environmentally oriented hearings. Some of the long-term spending ideas seem to be receding into the future as they delay the hearings. We will have time to recover those things and to present them more clearly to the people of Clark County so they know what it will cost—they have never really been told what it will cost—and see what kind of projects the people want to pay for.

We are going to hear great differences in what is available to be diverted. All of the figures that I am using came directly from two sources: one was the 2007 agency annual report; the other source is a report from the head of the Department of Taxation attesting to net revenues of \$82 million paid to the agency during the fiscal year that ended last summer. Whatever difference there is may need to be looked into. I think it would only take a couple of days to audit and trace the flow of this money, determine where it went so quickly, and see if it is still there.

Assemblyman McArthur:

Starting on line 14, it says that the water authority will deposit in the State General Fund the unexpended balance. Who determines this "unexpended balance"? I assume that is the money that is going into the fund, so who decides what that amount is going to be?

Assemblyman Hogan:

The assumption in drafting the bill was that we could just ask the agency what the balance is that is not yet expended or firmly committed in writing to either a bond redemption or an expenditure. Since we are getting such an incredibly wide difference between what the agency says is available for diversion back to the General Fund and what my research indicates is available, there may have to be a very brief audit to actually determine the amount so that the Legislature knows what would be available to help the county meet its needs.

Assemblyman Mortenson:

You said the money is uncommitted either for projects or for bond repayment. Is that in some of the literature that you supplied?

Assemblyman Hogan:

In the 2007 annual report, two figures were featured that capture all of the sales tax revenue to that date: \$550 million collected and \$352 million retained. Some of it is spent as they go. When funds available from bond sales are at a low level, they pay it directly. Then, when the bond receipts are up, they use them. So, the \$352 million in the retained category should be available if we were to pass this bill. That would still be subject to the water agency demonstrating that there was an actual commitment of funds prior to March 1, 2009, that would prevent those funds from being diverted back to the state. There is no intention to upset any firmly-committed planned spending or firmly-committed dedication of the funds to bond repayment. None of that will be disturbed, and any that can be shown to be actual and verifiable should be exempt from diversion. This will take some planning—mostly getting information from the water agency—but subject to some "trust but verify" procedures. I would recommend that policy for final determination of what funds would be available to go back to the General Fund.

Assemblyman Goedhart:

You have already gotten to the point that I was going to make, which is that the agency is taking the taxes that were voted for by the people, and then going against their will and redirecting those funds into a completely different area. There might be people who still want to see the improvements done to the water treatment system and other areas that the SNWA said were

worthwhile when the tax was voted in. The funds that are cut may be diverted towards areas they did not want to see enhanced.

**Andy Belanger, Management Analyst, Southern Nevada Water Authority,
Las Vegas, Nevada:**

I am here today in opposition to A.B. 321. I provided a short presentation to the Committee ([Exhibit D](#)) that you should have; however, I will not go slide by slide through that presentation.

The quarter cent sales tax was imposed by the Clark County Board of Commissioners (County Commission) in 1999 after receiving authorization by the 1997 Nevada Legislature. The Legislature approved a quarter cent sales tax for water and wastewater infrastructure in Clark County to moderate increases in water rates and connection charges needed to build the regional water infrastructure that was necessary for southern Nevada. We also needed to build a new intake into Lake Mead, and a new water treatment facility. We needed to build regional water laterals throughout southern Nevada. This funding source was under consideration for approximately two years by the Integrated Resource Planning Advisory Committee, which was comprised of citizens throughout southern Nevada who came together to look at how to best fund these types of projects. The Legislature authorized the County Commission to increase the tax in 1997 and it subsequently went to the vote of the people in 1998. That tax increase was supported by 72 percent of the voters in that election. Seventy-two percent of the people who went to the polls believed that a sales tax was necessary to moderate increases to water rates and connection charges. That is the reason the County Commission adopted that sales tax in December 1998; it went into effect in April of 1999.

There are a couple of interesting provisions in *Nevada Revised Statutes* (NRS) 377B.100 that apply to Clark County that do not apply to any other county that is able to impose this infrastructure tax. Clark County is the only county that has a sunset clause on the tax. We can impose the tax until June 30, 2025, or when \$2.3 billion is raised. We are the only county that has to provide a ten-year report to the County Commission, and the County Commission has to take a vote to continue the imposition of that tax. In December 2008, the County Commission found that the need for that revenue was still in place and unanimously voted to continue to impose the sales tax in Clark County. The Southern Nevada Water Authority has to hold a public hearing and provide a report every ten years. That public hearing will be held in three weeks on April 17, 2009. The hearing will be an opportunity for, as the law states, a status update on every project that was funded and discussed on those critical water needs.

We are concerned about this bill. I would submit to this Committee that water infrastructure is among the most critical infrastructure that can be built. Without a steady water supply in southern Nevada, there is no opportunity for businesses, schools, health care, or any other critical need to be sustained. We need to have a steady water supply, and the sales tax helps to do that.

Let me talk briefly about the third intake because the third intake is the most critical project that the sales tax is funding and will continue to fund. The third intake is an \$817 million project. The first two contracts have been let on it. It is absolutely critical because the elevation of Lake Mead is at 1,100 feet and the elevation of our first, or upper, intake is at an elevation of 1,050 feet. If the lake level drops 60 feet, we lose 40 percent of our water supply. We have been doing everything we can to build the third intake as fast as possible, so the community has a reliable water supply even during drought.

The reality facing the Southern Nevada Water Authority today is that we have a four-pronged funding plan for capital projects. Fifty-seven percent comes from connection charges, recognizing that growth should pay for growth. That connection charge revenue is gone. There is no growth in southern Nevada. Last month we refunded \$1.5 million in connection charges for developers who have decided to abandon their plans, revert the zoning and land use, and receive a refund of those fees. Twenty-eight percent of the capital funding plan comes from the sales tax. The remainder comes from two rate-based charges: the reliability surcharge and a commodity charge that shows up on everyone's bill. The unfortunate reality is that, if this bill passes, the Southern Nevada Water Authority and the residents of southern Nevada will face a significant and stark choice. We would either have to stop the construction of the third intake, or we would have to raise the regional water rate by about 400 percent to meet the needs of that project.

Assemblyman Goedhart:

In your four-pronged funding plan, what is the total of the revenue from water rates that you get on an annual basis from your customers? You wholesale it out to a variety of different water districts, right?

Andy Belanger:

Each water district has its own retail water rates that it charges the customers, and there is a regional water rate that the water authority assesses as well. It is a pass-through charge that ends up on each retail customer's bill. Currently, it is ten cents per thousand gallons.

Assemblyman Goedhart:

Do you have any idea what that revenue would have been in the year 2008?

Andy Belanger:
For the sales tax?

Assemblyman Goedhart:

Not for the sales tax, but for the water rates; just the water that you sold for ten cents a thousand, what did that amount to in fiscal year 2008?

Andy Belanger:
I will find out; I do not have that information.

**Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO,
Las Vegas, Nevada:**

Today, I am here as a former committee member of the Integrated Resource Planning Group that was formed in 1994. Mr. Goedhart is exactly right; this money is spent within Clark County.

I also served as a member of the Rates Committee that just finished their work. This was a long process because we only had one way to take water out of Lake Mead. A well placed lightning strike could have found Las Vegas, the economic engine of the state, without water. In fact, I think there was an incident where we had outages that put us in serious harm. We came up with the second straw into the lake, which ultimately improved the entire system, but was the largest public works job in the history of the State of Nevada, and is ongoing. You heard Andy talk about having to put the third straw in the lake for a lot of reasons—and I do not know that you want to go into all of those today—including water quality and reliability given the elevation of the lake as it continues to drop. When the lake is full, it drops at a slower rate. As the volume goes down, the water level drops dramatically because you have less area. Since we are 50 feet away from losing the ability to take water out of the lake, we have to do the third straw.

Speaking of money, the two people who were charged with running the campaign and who were the public faces of the campaign were Tim Cashman from the Las Vegas Chamber of Commerce and me. We did a road show for some years, including a show here at the Legislature to get the legislators to agree to the tax and ultimately at the County Commission when it was finally enacted after the people voted to support it. You would do irreparable harm if you did anything to change the funding mechanism for the third straw. Hoover Dam will stop working at its current rate of decline. That does not necessarily impact us, but I would urge you to consider that the leftover money is money that has to be used to improve the wastewater system. The natural course of things is that if you improve the water coming in, you are going to have more water going out. I do not want to go into everything again,

but tinkering with this would have a drastic impact on southern Nevada and we would urge you not to do that.

Constance Brooks, Senior Management Analyst, Administrative Services, Office of the County Manager, Clark County, Las Vegas, Nevada:

We would appreciate participating in any projects to fill the gaps that our budget shortfall, along with our economic downturn, has created. We would like to continue with this body and the legislators to work towards leveraging resources. However, we are in opposition to A.B. 321. We are in opposition due to the great fiscal impact that this would have on water conservation and water treatment in Clark County and the Clark County Water Reclamation District. We have discussed our concerns with Assemblyman Hogan. As you are aware, there is always an emphasis on water conservation and treatment due to supply and demand in this state, as well as the region. Since 2001, the Clark County Water Reclamation District has depended on the approximate \$16 million annually from the quarter cent sales tax. This is a net gain of approximately \$103 million to date. You may wonder how this funding is utilized. For those of you who represent districts in the south, this funding is utilized to treat the water that you drink, the water that you bathe with, as well as the water you use every day.

Samuel Scire, Assistant General Manager, Clark County Water Reclamation District, Las Vegas, Nevada:

We were founded in 1954 and through the years we have grown to be the largest wastewater treatment facility in Nevada. We process approximately 90 million to 100 million gallons of flow a day. We treat it and discharge it to the Las Vegas Wash that goes into Lake Mead. We are in the middle of a major capital improvement program (CIP) for Clark County. Our capital improvement program is \$990 million and we are in catch-up mode from the large growth that has occurred in the valley.

With that, I would like to go to the first chart ([Exhibit E](#)), which explains that we have to come up with a finance plan which includes capital requirements and rates necessary to cover those needs. Part of that is the sales tax revenue. We just raised our rates 6 percent this summer, with additional annual increases through 2013. Removing this funding from our CIP would cause us to increase rates even more, and we would have to go back to our board to request another 2.5 percent rate increase.

The next chart shows how we use these funds. We have received \$103 million to date; \$69 million has been used for expanding our treatment facilities, and \$34 million was used to create a new facility called "Desert Breeze" where we reclaim water.

In addition to that, I want to show you what is currently happening on a large expansion program that we have. The first one is the solids dewatering facility, which we started construction on in April 2007. We will complete it in December 2009 at a cost of \$140 million. Our aeration basin project started in October 2008 and will conclude in March 2011 at a cost of \$117 million.

Going to the next chart, we also support the rural communities. In Moapa Valley, we are currently putting in a new wastewater treatment plant. We started this in March 2008 and will conclude in the fall of 2009 at a cost of \$29 million.

The last project that I want to show you addresses our membrane and ozonation project for water quality and environmental challenges. It is a pilot program to address endocrine disrupting compounds (EDCs), which is a birth control discharge that enters the water supply. We are also addressing pharmaceuticals—pills and such that we take for ailments—that also get into the water system. The estimated cost of this project is \$73 million, and bids are due on April 7, 2009. Construction time is about two years.

In summation, the loss of the quarter cent sales tax would result in an immediate rate increase which, in this time of need, is not a good idea. It creates uncertainty on debt funding, could reduce our capital program, and places infrastructure and the community at risk. We respectfully ask that you do not support A.B. 321 due to the negative impact to water quality and the community.

Assemblyman Mortenson:

Everyone seems to be getting a little out of the quarter cent sales tax. What would have happened if the sales tax had not been approved by the people? You would have come up with some creative solutions. You would probably have done bonding, but you would not have boarded up all of Las Vegas and had everyone move to California or wherever.

Samuel Scire:

Bonding does support part of our capital improvement program. We probably would have had to raise rates higher.

Assemblyman Mortenson:

The point I am trying to make is that we are in such desperate need of money for children, education, mental health, Medicaid, and everything else and there is this pot of money. We have yet to hear about the policy issue, but could you not bond for the third straw? Yes, it would cost and you would have to raise

a little money to pay for that bond service, but we desperately need the money at this time.

Samuel Scire:

We are currently in the process of expanding the facility and the funds have been allocated for that expansion. If we could go back in time, I guess we could have bonded for more money; however, I am halfway through a lot of construction projects and cannot afford to shut them down. It would be extremely costly to the county and would put us in a difficult position.

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada:

The Nevada Association of Counties (NACO) is opposed to A.B. 321 on the general principle that we oppose taking local revenues and transferring them to solve state problems. Counties also have budget problems.

Maureen Brower, Political and Legislative Advocate, Southern Nevada Home Builders Association, Las Vegas, Nevada:

We are also opposed to A.B. 321. We truly appreciate the intentions of Assemblyman Hogan; however, we oppose this bill for all the reasons stated by Mr. Belanger and the others.

Phil Stoeckinger, Director, Finance Department, City of North Las Vegas, North Las Vegas, Nevada:

On behalf of our city, I would like to speak out in opposition to A.B. 321 as well. As alluded to earlier, over a decade ago this sales tax piece was passed for the construction of southern Nevada water and wastewater infrastructure. North Las Vegas is in the process of constructing our wastewater treatment facility. We are scheduled to receive our first distribution of the sales tax money within the next month. While putting together our rate models, we planned on bonding the sales tax dollars as a portion of the funding for that facility. If this legislation were passed, it would require an immediate 8 percent rate increase for wastewater customers alone.

Our voters passed the quarter cent tax by a vote of 72 percent over a decade ago. If we were to impose an 8 percent rate increase, the residents of North Las Vegas and southern Nevada would be paying for this infrastructure twice.

Finally, I want to point out that this targets southern Nevada. We have a sales tax rate in southern Nevada of 7.75 percent; the statewide rate is 6.75. The majority of that was for infrastructure, and we feel that this would put a burden on residents and businesses in southern Nevada.

Randy Robison, North Las Vegas, Nevada, representing the Virgin Valley Water District, Mesquite, Nevada:

We are opposed to A.B. 321. For a smaller agency like ours, it would have a significant impact. We are facing issues because of changes in the federal government's clean drinking water requirements. We have to build several arsenic treatment plants at a significant cost to a small agency like us. This type of revenue impact would be so incredibly severe that we could not bear it.

Carole Vilardo, President, Nevada Taxpayers Association, Carson City, Nevada:

Like everyone else, I know the state is in for a rough ride. We all know that very difficult choices are going to have to be made. When we were meeting on this, there were some difficult choices made. We had written this into our ballot issue back in October 1998. When we were looking at funding mechanisms for the third straw, we put it all on rates and connection charges. As it is, those are an integral component and they were indexed to go up at various times by a percentage. Many of you have noticed that periodically you get a rate and connection charge increase. Without the sales tax component, the connection charges would have jumped from \$3,400 at that point in 1998 to over \$25,000 in about 2023. That would be included in the price of a home, which at the time we were looking at it would have made the homes unaffordable. Now we have the reverse situation.

If you take any excess money away and reduce the sales tax revenue, the only thing left to make up those amounts are the connection charges, and those are just about nonexistent at this point. And yet, they were part of the overall funding formula for the third straw. I sat on the Clean Water Coalition and Financing Committee to address the financing issues of how to get more water and, as Mr. Thompson testified, when you put out more water with growth, you have to have sewage facilities. The voters approved language that said improve the quality of the valley's water and provide additional water and wastewater (sewer) capacity to meet customers' needs in the future. There is money that has gone to help with the outtake that is being looked at by the water reclamation district. It is a totally integrated process.

There are two things that I would like to end on. First, as was stated by Mr. Stoeckinger and Mr. Belanger, this was an advisory question approved by the voters. It would be a huge diversion to turn around and say, "Now we are going to take it away from you after the voters approved it." You have the right not to do anything with an advisory question, or to change an advisory question. In 1999, this body took that advisory question as it was worded and put it into law with no changes. I think the voters have an expectation—the 71.7 percent of them who voted for this—that it will be used accordingly.

When the economy turns around, we will reach the cap and then the quarter of a cent sales tax can be used for another local government or the state. If we had been on track and we did not have this economic downturn, we probably would have met the \$2.3 billion around 2017, freeing the tax revenue much earlier. We may still have that opportunity.

Barney Rabold, Deputy Director, Department of Utility Services, City of Henderson, Henderson, Nevada:

I would like to quickly take you through our city and describe the impact that this would have on the wastewater side of it. You have a handout from me ([Exhibit F](#)) and I will go through it quickly. To describe the City of Henderson, we have 280,000 citizens that we serve. We have approximately 82,000 accounts, which include both water and wastewater. We operate two water reclamation (sewer treatment) plants, one water treatment plant, and water distribution and wastewater collection systems throughout the 100 square miles of our city.

I want to talk specifically about the water quality as it relates to our wastewater operations. Our treated wastewater is discharged into Lake Mead, which is a national recreational area. Lake Mead is the source of drinking water for the Las Vegas Valley, Arizona, California, and parts of Mexico, and we face very stringent state and federal regulations that require us to meet very high levels of discharge. This is a driver for us and some of the infrastructure needs that we meet with our capital plans to address our wastewater treatment plants.

I will explain how we get our money and how the quarter cent sales tax relates to Henderson's wastewater efforts. You have heard that NRS 377B.100 provides for the quarter cent sales tax. However, the three wastewater agencies in the Las Vegas Valley receive approximately 35 percent of this total, soon to be shared with a fourth agency when North Las Vegas comes on line. Currently, the City of Henderson, the Clark County Water Reclamation District, and the City of Las Vegas share in this 35 percent pot of money based on an allocation by the amount of flows that we treat and what services we provide. That means Henderson gets 16 percent of the wastewater amount for infrastructure in our city. Over the last five years, that has equated to about \$4.4 million per year that comes in for use on our capital programs. This amount of money has sustained approximately 20 percent of our wastewater capital fund over the last five years.

I will show you pictures of things that we have done, primarily expansions. One is our existing plant, which improves technology and meets emerging needs in the wastewater community to give the highest level of treatment we can to protect the resources that go into Lake Mead. The other is the expansion of our

plant to meet the growing needs of our community, to be more efficient, and to achieve a higher level of treatment for our citizens.

The bottom line for us is that, if we had to replace this quarter cent funding with local funds, we would be impacted in three ways. One, we would have uncertainty of the debt financing that we have in place and that we will have in the future. Our best estimate right now is we would have to implement an immediate 15 percent increase in our sewer rates to provide cash financing for the deficit that we would incur. We could possibly delay or cancel some of our critical water expansion processes on the wastewater side. As a full-service provider, in addition to the wastewater bill that we present to our citizens, we present a water bill.

You have heard from the Southern Nevada Water Authority about the negative impact that they would pass on, through us, to our citizens. We estimate that would be around a 30 percent increase to the overall water rates to our citizens. So the combined impact of a 15 percent sewer rate increase and a 30 percent water rate increase is going to be very significant. We are trying as hard as we can to mitigate the impact of our rates on our citizens. With that in mind, we would respectfully ask that you do not support A.B. 321 due to the negative impact that we in Henderson would see financially and in the quality of our treated wastewater.

Chair McClain:

We are going to close the hearing on A.B. 321.

We will open the hearing on Assembly Bill 386.

Assembly Bill 386: Proposes to exempt sales to senior citizens of hearing aids, hearing aid accessories and ophthalmic or ocular devices or appliances from sales and use taxes and analogous taxes. (BDR 32-525)

Assemblyman William Horne, Clark County Assembly District No. 34:

Assembly Bill 386 proposes to help our state's senior citizens, those persons 62 years of age or older, by exempting them from state and local sales taxes when they purchase hearing aids, corrective eye glasses, and/or contact lenses. In order for this bill to be effective, the voters must first approve such an exemption from the state's 2 percent sales tax at the upcoming general election in 2010. If the voters approve the state sales tax exemption, then the bill provides for a parallel exemption to the local sales tax to take effect. The bill is set up this way to ensure that Nevada remains in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA). This agreement requires member states to have a single sales tax rate. Although the SSUTA permits

exemptions, the exemptions must be the same for both the state and local sales tax rates so the online and mail order vendors have an easier time calculating and collecting sales tax. Nevada already exempts prosthetic devices, orthotic appliances, ambulatory casts, medicines, and hemodialysis products from state and local sales tax. There is ample precedence for this bill.

The Streamlined Sales and Use Tax Agreement includes hearing aids, corrective eyeglasses and contact lenses, and prosthetic devices within its definitions, although Nevada specifically excludes hearing aids and glasses from the definition of medicine. In 2005, similar legislation had been submitted with bipartisan support, but due to the broadness of the items that were to be exempted, these bills were ultimately unsuccessful. However, A.B. 386 is much narrower in its scope than the 2005 bill or the 2007 measure because A.B. 386 is limited to senior citizens purchasing hearing aids, corrective eyeglasses, or contact lenses. I should also point out that the bill makes the findings required by section 1 of Assembly Joint Resolution No. 16 of the 73rd Session that was passed by the voters in statewide question number 3. I believe the benefit to our seniors in reducing the cost of hearing aids and eyeglasses outweighs any impact to our sales tax revenue, and the loss of this revenue will not affect the repayment of any bonds.

In closing, I urge you to let the voters decide if our senior citizens deserve an exemption from sales taxes for these most basic devices that we may one day all need to maintain our vision and hearing, and to continue to live independent and productive lives as we age. I have to point out that we are all very much aware of the fiscal condition of the state; we hear it constantly. There are fiscal notes on this bill and the current fiscal note from the Department of Taxation is \$4.5 million for future biennia. I believe there was another fiscal note from the Secretary of State's Office in the amount of \$62,000 for fiscal year 2010-11. Once again, this would go to the vote of the people. I appreciate this Committee's consideration and I understand the condition of the state at this time.

Chair McClain:

We need to ask the Legal Division if we can put an age limit in there for this ballot question.

That is quite a fiscal note.

Assemblyman Horne:

It is. I knew that a fiscal note would be attached, but I must admit that I was surprised by its size.

Chair McClain:

It includes the entire 7.75 percent. It has all of the taxes included as it would affect them anyway.

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada:

We are neutral on this bill. We just have one concern that we want to share with the Committee and that is the number of bills this session that deal with abatements, exceptions, or redistributions of tax revenues. We hope that you will take a look at the big picture and how this is all going to work together and affect both the state and the counties.

Chair McClain:

We will close the hearing on A.B. 386.

The next bill is Assembly Bill 403.

Assembly Bill 403: Revises various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement. (BDR 32-752)

Assemblyman James Settelmeyer, Assembly District No. 39:

Assembly Bill 403 deals with the Streamlined Sales Tax. This was originally passed back in 2001. The Legislature, at that time, found and declared that we should simplify and modernize the sales and use tax to reduce the burden of tax compliance for all sellers and types of commerce. The bill is really about bringing us into compliance with the original bill that was passed in 2001. At that time, we only had one person vote against it, and that person is no longer within this body. Thirty-three states have passed this, and Nevada has agreed to it, as well as requiring the collection of sales and use tax by remote sellers that have no physical presence in the state to which the item is delivered.

Currently, in the State of Nevada, this is causing a little erosion of our tax base due to electronic commerce. Judging by the newest data that Mr. DiCianno will talk about in a moment, we are seeing this going up. Of all the tax streams that we have in the State of Nevada, not one is going up; they are all going down. But this one is actually going up. Currently, from the latest information that I have seen for this year, it will be approximately \$100 million towards the state, but that would have to be divided up with the counties, and they would like more money this year too.

This will remove the burden to interstate commerce as has been indicated. I tend to agree with that too; it will create a level playing field. It will also

create a situation where Main Street businesses that pay taxes will not be significantly disadvantaged as they currently are with eStreet-Commerce.

I gave you an amendment ([Exhibit G](#)). I took the original bill from the Legal Division, looked at it, and wondered: if I was one of my constituents who did not have knowledge of the Streamlined Sales Tax, would I actually vote for it? Unfortunately, I came to the conclusion that I would not; therefore, I tried to modify it to clearly state that all we are trying to do is bring us into compliance with federal rules.

Chair McClain:

Is section 1 of the original bill the new items that are included in the compact?

Dino DiCianno, Executive Director, Department of Taxation:

Mr. Settelmeyer discussed this with me, and I have a copy of the mock-up. We have no issue with it.

Chair McClain:

My question is still, in section 1, are these for the compact?

Dino DiCianno:

If you would like, I can get into the discussion about why this is necessary. I am here as the State of Nevada voting member to the Governing Board, and I am here in support of Mr. Settelmeyer's bill. The sections of the bill that you are referring to relate to changes that have occurred to the Streamlined Agreement since we last met. This is the agreement, and in order to maintain ourselves as a full member to the Governing Board, each state must amend its statutory language to conform to this agreement. That is what sections 1, 2, 3, 4, and all the way through the bill do until you get to the language that refers to what the ballot measure does. The ballot measure will go to the voters in 2010.

One of the documents that I provided is a listing of all the Governing Board members and the participating members ([Exhibit H](#)). Nevada is a full member. There are 19 full members to this Board, and there are three associate members. I realize that is only 22, but not all 50 states are participating in this process, including California and New York. They have not made the legislative changes in order to become affiliated either as an associate member or as a full member.

The second document highlights all the different states. The states that are in blue are full members of the Governing Board. As you can see, Nevada is one of them. There is action in Congress. Senator Enzi is in the process of

mocking-up the Sales Tax Fairness and Simplification Act, a bill that will probably be introduced shortly at the federal level. The idea is to allow the full member states to share the revenues associated with remote sales that occur through Internet providers. As far as what is referred to as the "Fox Study," which was done by the University of Tennessee, I would like to read a couple of excerpts from it because it gets to the heart of why we are here today in support of this bill.

It is entitled, "State and Local Governments Sales Tax Revenue Losses from E-Commerce: Updated Estimates," and this is part of the executive summary from that document:

"The development of new technologies and digital processes has had a profound effect on the U.S. economy as e-commerce sales have grown from \$995 billion in 1999 to \$2,385 billion by 2006. The rapid growth in e-commerce affects state and local economies in several important ways. First, state and local governments continue to lose sales and use tax revenues because of the inability to collect taxes that are due. Second, firms change their best business practices to avoid creating a collection responsibility in certain states. Firms choose to locate their selling or warehousing activities to avoid creating nexus rather than locating where they can operate more efficiently. Also, local vendors face a competitive disadvantage to e-commerce competitors as consumers browse in shops on Main Street but then make their purchases online to evade the tax. Finally, there may be distributional consequences if lower-income consumers are more likely to make purchases in local stores where the tax is collected."

We went to the ballot in 2008, and it is unfortunate that there was a misunderstanding of the language contained in the ballot. I feel as much to blame as anyone because more should have been done to inform the voters of this state why we were doing it. It boils down to two things: this is not a tax increase at all—only the voters of this state can change the 2 percent state rate. We are not asking for that. All we are asking for is the ability for this body to make the necessary changes to our sales tax act so that we are in conformance with the federal agreement. That is all we are asking. Without that, if we do not, the state runs a risk that it will no longer be a full member of that Governing Board.

Let me explain the consequences of not being a full member of that Board. Part of Senator Enzi's bill, which is the Sales Tax Fairness and Simplification Act, only allows those states that have conformed to the Streamlined Sales and

Use Tax Agreement to be able to share in that revenue. If we are not part of it, we get nothing. That was part of the agreement with the business community, the remote sellers, and even those businesses that have a nexus in the various states that agreed to this, and as we have agreed to it.

We have talked about this loss to the state and local governments. Based on the most current study, Nevada lost \$107.4 million in sales tax revenue in 2007. In 2008, it lost \$114.6 million. By the time we work this out in 2012, we are talking about nearly \$170 million. I think it is important to break that number down. It is not just state money; it is also local government money. Two-fifths of that amount would go to the General Fund. The remainder would go to local governments. That is why it is important that we get the support from local governments and the business community. I have also talked to Carole Vilardo with the Nevada Taxpayers Association. The Chambers of Commerce also support this, including Mr. Bacon with the Manufacturers Association. I need to emphasize again, this is not a new tax. This is a tax that the states were prohibited from collecting based upon a court case that occurred in 1992. What Congress is doing is to enact federal legislation that would allow the states to be able to collect this money.

Chair McClain:

I am sure the Committee knows that we need to do this. Other than the ballot language, the other language must remain compliant with the agreement. Let us talk about how this is better now so people will understand what we are trying to do.

Assemblyman Settlemeyer:

In an earlier amendment, I tried to take too much out of it; however, the Legal Division came back and indicated that I had taken out too much. It was important to clearly convey to the voters that we are in no way trying to increase taxes, and in no way are they giving the Legislature the power to increase taxes. It was my feeling that most voters were afraid of giving the Legislature that type of authority over sales tax. In that respect, I tried to craft the language to clearly indicate numerous times this only allows us to be in compliance with the federal rules. The language throughout the bill is towards that end: to specifically narrow the focus of the power that would be vested in us, and to clearly indicate to the voters that these are the only powers that we shall have. I wish we could go much further, but there are certain sections that need to remain in here to have any effect, according to the Legislative Counsel Bureau.

Chair McClain:

The Legal Division is okay with this language?

Assemblyman Settlemeyer:
Correct.

Chair McClain:

I guess we would have to rely on the pros and cons—the statements that they write—so they could pull the intent from this Committee.

Assemblyman Settlemeyer:

There has been some discussion with Carole Vilardo and other entities that are going to try to take a much more active role in education this time. I would greatly urge anyone here who is going to run in any capacity during the next election to try to encourage the voters to approve the bill. I did it at every forum that I was at.

Chair McClain:

I think the people just did not understand. They saw two words together, "Legislature" and "taxes," and said no.

Assemblyman Grady:

I agree with Dino; we have gotten this far, let us not mess it up.

Assemblyman Settlemeyer:

It was Assembly Bill No. 455 of the 71st Session by Goldwater, Cegavske, Arberry, McGinness, Coffin, and Schneider.

Assemblyman Gustavson:

I support your bill. You said you have been trying to convince the voters that this is a good thing, but I think they knew it was not a tax increase. They still worry that it might be. They enjoy buying things over the Internet and not paying that tax. How are we going to convince them that this is a good idea? Some of them buy things over the Internet because they do not have to pay that tax, and sometimes not the freight. What is the best way to convince them that it is a good thing?

Assemblyman Settlemeyer:

We have been asked what the most palatable tax is. It is already in law that these individuals pay taxes in these situations, but due to a loophole in existing law, they are not. Those who are not paying it are violating the law. We just do not have any way to enforce it. How are you going to tell someone who enjoys not paying duty on things that they should? I am not sure that you can win that discussion.

Chair McClain:

If they have a physical presence in your state, they will also pay that tax online.

Carole Vilardo, President, Nevada Taxpayers Association, Carson City, Nevada:

I am not going to be redundant because every time the Streamlined Sales Tax has come up, we have supported it. Two points I would like to make, or reiterate: the person who is buying goods online and not paying sales tax is actually guilty of violating Nevada sales and use tax laws. If you go on the Department of Taxation's website, there is a form you are supposed to download if you buy something online. It is called the Consumer Use Tax form. But, as Mr. DiCianno said, it is impossible to police 2 million people.

The other point I would like to make is, not only does this attempt to clarify that it has nothing to do with a base rate increase, but the fact that it has "digital" in front is strictly a compliance issue. We need to be in compliance so the Governing Board and the powers that be that constantly monitor our status as a member of the Governing Board know that we are in compliance. This does not mean that you are suddenly taxing every item just because we have changed the definition. The ballot question tries to address that, not only the rate, but the base issue. You are not expanding the base by approving this. But we will expand the state's revenue system and, if Congress acts soon enough, this revenue will become available to us probably within 120 days because our law is already set up to collect the tax. We would have an additional revenue source but, unfortunately, I do not think Congress is going to act before we leave session.

Chair McClain:

Besides that, we will not be able to get this on the ballot until 2010.

Carole Vilardo:

I realize that, but since we are on the Governing Board until we are reviewed, we would be able to collect it.

Bryan Wachter, Deputy Director, Retail Association of Nevada, Carson City, Nevada:

We want to go on record in support of this bill. We obviously do not need to go into why it is important to be part of this. I am just reiterating that this is a tax already provided on goods that you can get anywhere else. The infrastructure is already there for you to collect. We like the new language and we feel that, by making this change, we are giving the voters a chance to not be inundated in future elections.

Chair McClain:

I will close the hearing on A.B. 403.

There has been a motion to amend and do pass by accepting Assemblyman Settlemeyer's proposed Amendment 3791.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 403.

ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

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

We are adjourned [at 3:07 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Recording Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Transcribing Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: March 31, 2009

Time of Meeting: 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 321	C	Assemblyman Joseph M. Hogan	Written testimony
A.B. 321	D	Andy Belanger	Presentation on Quarter Cent Sales Tax dated March 31, 2009
A.B. 321	E	Samuel Scire	Presentation on the Clark County Water Reclamation District dated March 2009
A.B. 321	F	Barney Rabold	Presentation on City of Henderson Department of Utility Services dated March 2009
A.B. 403	G	Assemblyman James Settlemeyer	Mock-up of Proposed Amendment
A.B. 403	H	Dino DiCianno	Handout on the Governing Board States of the Streamlined Sales Tax Governing Board, Inc.