

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

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

The Committee on Taxation was called to order by Chair Kathy McClain at 1:41 p.m. on Tuesday, April 7, 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 Morse Arberry Jr.
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:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County Assembly District No. 9

Minutes ID: 840



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

George Stevens, Chief Financial Officer, Department of Finance,
Clark County, Las Vegas, Nevada
Bobbette Bond, MPH, Executive Director, Nevada Health Care Policy
Group, LLC, North Las Vegas, Nevada
James L. Wadhams, Jones Vargas, Las Vegas, Nevada, representing
Nevada Hospital Association, Reno, Nevada
George Ross, Director, Legislative & Government Affairs, Snell & Wilmer,
LLP, Las Vegas, Nevada, representing Hospital Corporation of
America, Nashville, Tennessee, and Sunrise Hospital & Medical
Center, Las Vegas, Nevada
Joseph Guild, Reno, Nevada, representing Altria Group, Inc., and
United States Smokeless Tobacco Public Affairs, Inc.,
El Dorado Hills, California
Monte Williams, Partner, Shepherd, Williams and Associates, LLC,
Sacramento, California, representing United States Smokeless
Tobacco Public Affairs, Inc., El Dorado Hills, California
Samuel P. McMullen, Partner, Snell & Wilmer, LLP, Las Vegas, Nevada,
representing Altria Client Services, Inc., Sacramento, California
Christopher Roller, Director of Advocacy, Western States Affiliate,
American Heart Association, Las Vegas, Nevada
Jennifer Stoll-Hadayia, MPA, Public Health Program Manager,
Washoe County District Health Department, Reno, Nevada
Alfredo Alonso, Lewis and Roca LLP, Reno, Nevada, representing
Conwood Company, LLC, Winston-Salem, North Carolina

Chair McClain:

[Roll was called.] We are going to begin with a work session.

Michael Nakamoto, Deputy Fiscal Analyst:

We will start with Assembly Bill 369.

Assembly Bill 369: Revises provisions relating to the property tax exemption for
the property of certain nonprofit organizations. (BDR 32-916)

Michael Nakamoto:

Assembly Bill 369 is Assemblyman Mortenson's bill that the Committee heard on March 24. The bill makes changes to the tax exemption for real property and improvements held by various conservancies for eventual acquisition by the state or a local government. The bill expands the eligibility for the exemption such that it applies to any nonprofit organization recognized as exempt under Section 501(c)(3) of the *Internal Revenue Code* that is organized principally for the conservation of land, cultural resources, and natural resources. The bill also allows the eligible nonprofit organization to receive the exemption if the property will be held indefinitely and is vested in the nonprofit organization for the purposes of education, environmental protection, or conservation, even if consideration for the acquisition of the property is not made by a government entity.

Assemblyman Mortenson gave the introductory remarks in support of this bill. He noted this issue had been brought up in 2007 as an amendment to Assembly Bill No. 209 of the 74th Session, which added the Archaeological Conservancy to the list of eligible organizations for an exemption pursuant to *Nevada Revised Statutes* (NRS) 361.111. He also noted he had been approached by Clark County with respect to removing the specific names of the organizations from this section and making the exemption more generic.

Angus Quinlan, the Executive Director of the Nevada Rock Art Foundation, testified in support of the bill. He noted that the provision of tax exemptions has proven highly effective in promoting voluntary land conservation agreements. He further suggested that the expansion of this exemption to the more general definition provided in the bill would allow for flexibility and encourage homegrown land trusts to participate in conservation efforts. Julie Clark, the Western Regional Field Representative for the Archaeological Conservancy, also testified in support, noting that, without the provision of the exemption in this bill, it would be difficult for her organization to acquire and preserve additional sites within the State of Nevada.

Questions arose regarding the exemption that was granted by this Body during the 2007 Session, questioning why that particular exemption did not apply. Testimony given by Ms. Clark indicated that particular exemption requires the organization to obtain a written statement from the state or a local government indicating they are considering purchasing the property. The Conservancy does not have such an agreement for the particular piece of land they are looking to purchase, the Little Red Rock petroglyph site in Clark County. Therefore, they would not be able to receive the exemption.

Concerns were raised about the definition of nonprofit organization. Committee members worried that applying this particular exemption to all of the nonprofit groups that met those criteria would make it too broad. Similar concerns were raised that people who wanted to seek an exemption would simply organize a 501(c)(3), claim their land was being held for conservation purposes, and claim an exemption to which they may or may not have been entitled.

Ms. Terry Robertson, speaking on behalf of Don Hendricks, testified from Las Vegas in support of the bill. She provided an overview of the arrangements that might be made for the Archaeological Conservancy in the purchase of the Little Red Rock site. She expressed hope that this law would facilitate the purchase of that land, followed by the eventual turnover of that site to Clark County once arrangements have been made. There was no testimony in opposition to the bill.

No amendments to the bill were proposed at the hearing. However, at the Chair's request, Fiscal staff prepared a mock-up of a proposed amendment ([Exhibit C](#)). The main change Fiscal staff was requested to make was to take out the generic definitions for nonprofit organizations and put back in the specific names of the four agencies or organizations: the Archaeological Conservancy, the Nature Conservancy, the American Land Conservancy, and the Nevada Land Conservancy, who were originally entitled to this exemption. This amendment would merely restore those names, but the remaining policy within the bill would carry forward.

Assemblywoman Pierce:

Was the sponsor of the bill all right with this amendment?

Assemblyman Mortenson:

I am very happy with it. The amendment has left the two most important things that will allow the Conservancy to acquire Little Red Rock. The Chair took out a few things she was concerned with, and I might even have been concerned with them too. I think this was just a marvelous job.

Assemblyman Goedhart:

Say the Nature Conservancy has a piece of land that they are ultimately planning to turn over to a federal agency for conservation purposes. If the land is worth \$1 million, and they keep the land for ten years, at that time they would not be paying the taxes in arrears on fair market value. The land would just be taxed based on first-class pasture rates. Is that correct?

Chair McClain:

If it goes to the federal government, they will not pay any taxes.

Assemblyman Goedhart:

I think there is a provision that says, upon the transfer of the property, if "other than the Federal Government, the state or local governmental unit, the property must be assessed at the rate set for first-class pasture by the Nevada Tax Commission for each year it was exempt." It seems that if the nonprofit bought it for \$1 million, and then, after ten years, sold it for \$7 million, they would still have quite an exemption for those ten years because they would be just paying the first-class grazing rate, which would only be several thousand dollars instead of several million. My colleague from North Las Vegas is always looking to protect us against giveaways that may be unintended.

Chair McClain:

But that is existing language. That is the way it has always been. We did not change that part of it. Basically, we took the nonprofit out and allowed it to be kept for the purposes of education, environmental protection, and conservation until they can find a governmental entity who wants it.

Assemblyman Grady:

I like the amendment better than the original bill except that there is no time limit on this. It can be held by them forever because, under subsection 1, the federal, state, or local government has agreed in writing that the acquisition of the property will be given serious consideration. If they never purchase it, nothing ever happens except they get the tax abatement?

Michael Nakamoto:

You are correct. The way this is drafted, the Archaeological Conservancy or any of the other organizations listed as eligible can hold the property indefinitely as long as they are holding it for the purpose of education, environmental protection, or conservation or they have an existing agreement with a local, state, or federal government for the consideration of purchasing it. They would be eligible for the exemption even if that purchase did not occur, so long as they are vesting it for those other purposes.

Assemblywoman Kirkpatrick:

I guess Sales and Use Tax exemptions are the only ones we do not put a date on. But in subsection 3, it says they have to go back each year that it was exempt and pay it back? Is that how it works? I am trying to understand that portion of it, because subsection 2 seems to conflict to some extent.

Michael Nakamoto:

The way the statute works right now is these organizations are eligible for the exemption as long as they have a written agreement with a government entity that the entity intends to purchase that land. If they have been getting this exemption but they end up selling it to somebody other than that governmental entity, then the county assessor is required to go back and assess the property as first-class pasture—and this gets at the question Mr. Goedhart was asking—for each year they claimed the exemption. Basically, the exemption is taken away from them, and they have to pay back-taxes at the first-class pasture rate for the entire period they received the exemption.

Chair McClain:

Is everybody all right with this? What we are questioning now is existing language from before. I will accept a motion to Amend and Do Pass.

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 369.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

Assemblyman Anderson:

That is entirely as presented in the mock-up?

Chair McClain:

Yes.

THE MOTION PASSED UNANIMOUSLY.

Chair McClain:

Mr. Mortenson, do you want to do the floor statement for A.B. 369?

Assemblyman Mortenson:

Thank you, Madam Chair.

Michael Nakamoto, Deputy Fiscal Analyst:

The second bill on the work session today is 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)

This bill was sponsored by Assemblyman Horne and was heard by this Committee on March 31. The bill proposes the submission of a ballot question

to Nevada voters at the November 2010 General Election asking whether the Sales and Use Tax Act of 1955 should be amended to provide exemptions from the Sales and Use Tax for certain devices. The bill would apply to hearing aids and hearing aid accessories sold to a person who is 62 years of age or older. It would also apply to ophthalmic or ocular devices or appliances sold to a person 62 years of age or older except when sold to a licensed optometrist or physician to be used or furnished by him in the performance of his professional services in the diagnosis, correction, or treatment of conditions of the human eye.

The bill also provides that, if the ballot question is approved by voters at the 2010 General Election, similar exemptions to all other state and local sales and use tax rates would be enacted in statute. The bill also provides that these exemptions would expire, by limitation, on December 31, 2020.

Testimony in support of the bill was given by Assemblyman William Horne, who stated that Nevada already provided exemptions on sales and use taxes for other medical devices and that the voters deserve the opportunity to decide whether these exemptions for senior citizens should also be added. Mr. Horne also noted the bill, by making the exemptions for the other state and local sales and use tax rates contingent upon passage of the ballot question amending the Sales and Use Tax Act of 1955, ensured continued compliance with the Streamlined Sales and Use Tax Agreement. He also noted the bill contained the legislative findings required of this Body as a result of Assembly Joint Resolution No. 16 of the 73rd Session, which is codified in Article 10, Section 6, of the *Nevada Constitution*.

A question arose as to whether there were any legal issues with setting the age threshold at 62 years old. Fiscal staff indicated they would seek a response from the Legal Division regarding these concerns. In fact, Fiscal did contact both the Legal Division and the Department of Taxation regarding these concerns. Both agencies responded that there were no concerns either with the age threshold from a legal standpoint or with the language to maintain compliance with the Streamlined Sales and Use Tax Agreement.

Wes Henderson from the Nevada Association of Counties (NACO) testified as neutral toward the bill. He did, however, express his concern at the number of bills being considered by the Legislature this session that could potentially have a negative effect on county revenues. He hoped the Legislature would examine the cumulative effect of these bills.

No testimony was received in opposition, and no amendments were proposed. My only other note is that A.B. 386 was declared by the Fiscal Analysis Division as eligible for exemption pursuant to Joint Standing Rule No. 14.6. This bill has

also been concurrently referred to the Assembly Committee on Ways and Means.

Chair McClain:

Is there any discussion?

Assemblyman Aizley:

Aside from the legalities, what is the reason for exempting someone based on age if they need a hearing aid? Why not exempt all people who need hearing aids?

Chair McClain:

That is a good question. I guess we would have to ask the sponsor that question. We can ask him when it gets to Ways and Means.

Assemblyman Gustavson:

When you need a hearing aid, you need a hearing aid.

Assemblywoman Pierce:

I think we understand that most people's incomes go down considerably when they get to be retirement age. If it were not for Social Security, most seniors in this country would be living below poverty level.

ASSEMBLYWOMAN PIERCE MOVED TO DO PASS
ASSEMBLY BILL 386.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

Chair McClain:

Mr. Aizley has a point when you think about it. We try to make breaks for seniors because they do have limited incomes. And hearing aids are hardly ever covered by insurance, and they are very expensive.

Assemblyman Gustavson:

I do not believe the other medical devices that are exempt have an age limit, so this is something to think about when it goes to Ways and Means.

Chair McClain:

I think the whole bill has the age limit.

Assemblyman Gustavson:

This bill does, but I am talking about the other medical devices that are already exempt from sales tax. They do not.

Chair McClain:

No, I do not think they do either. We will let Mr. Arberry worry about it.

THE MOTION PASSED. (ASSEMBLYMAN GOEDHART VOTED NO.)

Chair McClain:

We have two more bills that we probably want to move out of here without recommendation and send over to Ways and Means, because they have been declared exempt. Michael, if you would, please explain Assembly Bill 255.

Assembly Bill 255: Increases the tax on tobacco products and provides for use of the additional tax proceeds to expand certain health care delivery programs. (BDR 32-812)

Michael Nakamoto, Deputy Fiscal Analyst:

This is Assemblywoman Leslie's bill that would increase the cigarette tax by \$1 a pack or 50 mils a cigarette. The proceeds of that tax would go to pay for the coverage of certain pregnant women as well as Medicaid and the State Children's Health Insurance Program (CHIP) programs. The bill also requires the Department of Health and Human Services to include presumptive eligibility to and certain coverage for pregnant women in this state in the plan for Medicaid.

ASSEMBLYMAN ANDERSON MOVED TO REREFER ASSEMBLY BILL 255 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYWOMAN LESLIE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART, GUSTAVSON, AND MCARTHUR VOTED NO.)

Chair McClain:

Let us go to Assembly Bill 277, Michael.

Assembly Bill 277: Makes various changes concerning the excise tax on liquor.
(BDR 32-204)

Michael Nakamoto, Deputy Fiscal Analyst:

This is Assemblyman Anderson's bill that would increase the excise tax on the various categories of liquor that are currently taxed in this state. The proceeds of the additional tax would be divided evenly between genetic marker testing of certain criminal offenders and certain drug and alcohol programs through specialty courts. I would note that, even though, if you look at A.B. 277, there is no fiscal effect listed for state or local government, the Fiscal Analysis Division did receive an unsolicited fiscal note from the Department of Taxation indicating there would be additional programming costs incurred by the Department of approximately \$100,000, which would potentially create a fiscal impact.

Chair McClain:

This is the same situation as the last bill. We need a motion to rerefer to Ways and Means without recommendation.

ASSEMBLYWOMAN LESLIE MOVED TO REREFER
ASSEMBLY BILL 277 TO THE ASSEMBLY COMMITTEE ON WAYS
AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART,
GUSTAVSON, AND MCARTHUR VOTED NO.)

Chair McClain:

We actually have three bills on today's agenda. Mr. Gustavson, would you like to talk to us about Assembly Bill 450?

Assembly Bill 450: Repeals the business excise tax. (BDR 32-953)

Assemblyman Don Gustavson, Assembly District No. 32:

I will not take up a lot of the Committee's time. Due to the dire financial situation in the State of Nevada, as the primary sponsor of A.B. 450, I have decided to withdraw this bill, at least for this session. To everyone who showed up to testify on the bill, I want to thank you for coming.

Chair McClain:

Thank you, Mr. Gustavson. Now we can take up Assembly Bill 379.

Assembly Bill 379: Revises provisions relating to the care of indigent patients by certain hospitals. (BDR 40-1066)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

[He distributed a PowerPoint presentation of his prepared testimony ([Exhibit D](#)), a proposed amendment ([Exhibit E](#)), and a set of tables showing costs of uncompensated care at various hospitals ([Exhibit F](#)).] Going back to the 1980s, there has been a law dealing with indigent care and the fact that private hospitals historically did not cover people who did not have health insurance. In the 1980s, a 0.6 percent fee was proposed to try to compensate for the fact that private hospitals would refer patients without health insurance to the University Medical Center (UMC).

Every year, every hospital has to provide a net revenue amount to the state, which gives it back to the counties. The counties then calculate 0.6 percent of that, which results in the amount of indigent care each private hospital has to provide. After they have provided that much indigent care, they are compensated for any indigent care beyond that point.

This bill seeks to raise that 0.6 percent to 2 percent of net revenues. I have given you a full chart ([Exhibit F](#)) that has all the amounts and explains how much each hospital currently provides and how much they would provide under my bill. The hospitals in northern Nevada and southern Nevada have similar losses. The uninsured population is increasing dramatically. This year we are projecting UMC's losses will be approximately \$56 million. Next year's projected losses are about \$75 million, and projections for 2010 are almost \$100 million. That is for treating people who do not have health insurance and cannot afford to go anywhere else. As you can see, this is a huge problem.

Currently, about \$10 million in uninsured care is being compensated for by private hospitals in southern Nevada. This bill would increase that to about \$32 million, for a difference of about \$22 million. That is not a huge amount, given the total amount of money these hospitals make from treating patients, but you are going to hear, I am sure, that it would break the bank if they did it.

The fact is our public hospital, which is required to treat everybody, is obviously going broke. These other hospitals have been treating and getting paid for some indigent patients. We are just trying to raise the threshold so they will treat more patients.

After private hospitals provide their 0.6 percent of indigent care, it is often cheaper for them to send those patients to UMC instead of providing further indigent care. This bill would discourage that. It would probably also take people off the rolls of UMC.

You may be asking why this bill is in your Committee. I have been wondering that myself.

Chair McClain:

We have all been wondering that, since it deals with Chapter 40 of *Nevada Revised Statutes*. I guess we were all asleep at the switch when it got introduced.

Assemblyman Anderson:

Is this only applicable in Clark County? What impact will it have on the hospitals and indigent care programs in some of the smaller counties that have no other choice? It is only private hospitals that are impacted financially, so there is no benefit for counties that have no private hospitals.

Assemblyman Segerblom:

It also impacts Washoe County. When the earlier bill was enacted, Washoe had a county hospital, but now it does not. However, Renown Health still has to figure out its net revenue and submit that figure to the state. Washoe County has an office that will figure out how much indigent care Renown will have to provide and make sure they provide that indigent care. After they provide up to their threshold, then they are paid at Medicaid rates for the rest of the indigent care.

Assemblyman Anderson:

I see the breakdown for Clark County. Do you have a similar breakdown for Washoe County?

Assemblyman Segerblom:

I apologize. I do not have that. Also, I forgot to mention that this bill has already been through the Assembly Committee on Health and Human Services. There, an amendment was proposed, which you have before you ([Exhibit E](#)). The bill sought to add outpatient care to go along with inpatient care, but it was unclear what the net effect of that would be. So we proposed this amendment to delete the outpatient care. With the amendment, this would apply strictly to inpatient care, which is in existing law. All we are doing is seeking to change the 0.6 percent rate to 2 percent.

Chair McClain:

So that is the only change that is left? [Assemblyman Segerblom confirmed that.]

Assemblywoman Koivisto:

I am just wondering how many of us saw "60 Minutes" on Sunday night about how UMC has had to close its oncology unit. People are dying. How is this going to affect that? A lot of those folks are now seeking help in other hospitals. I wonder whether you looked into what the other hospitals' profit margins are now with the economic situation being what it is and what kind of effect that is going to have.

George Stevens, Chief Financial Officer, Department of Finance, Clark County, Las Vegas, Nevada:

This bill would essentially free up about \$22 million of county indigent funds that could go to maintaining or expanding services at UMC. As for the effect on private hospitals, I do not believe I could answer that question.

Assemblyman Grady:

Just so we are sure we are not mixing up two indigent accounts, this has nothing to do with the Indigent Accident Fund (Indigent Supplemental Account) that we swept during the special session and that we continue to sweep for the next two years.

George Stevens:

No, this is a separate indigent account. This is funding that is actually paid out of either the county General Fund or the \$0.10 indigent tax rate, \$0.09 of which we retain. The way it works is the private hospitals provide their uncompensated care; we track how much of that is provided to qualified indigents and when the hospitals hit their cap. After that, we continue to pay any bills they present for qualified indigents. This would raise that threshold.

Some funds that otherwise would be paid to the hospitals would be retained by the county and could be used for other purposes. Freeing up \$22 million could potentially replace some of the money that was diverted from the Indigent Accident Fund, at least in Clark County.

Assemblyman Grady:

I am a little confused by the statement that it would free up some of that money. I just want to be assured that, after we have swept the money, we know which effects are brought about by the sweep and which are the results of this bill.

Chair McClain:

I think we are all a little uncertain about this bill, but if we keep talking, maybe we will figure it out.

Assemblyman Segerblom:

If you look at the chart I provided ([Exhibit F](#)), the first page shows the numbers generated by existing law. The first column on the left lists the private hospitals and the dollar amount of the 0.6 percent of their net revenue for fiscal year (FY) 2007–08. If an indigent comes in and the hospital treats him, the hospital sends the bill for that care to George Steven's office. If it qualifies for indigent care, George enters it in the ledger.

When the total indigent care for that hospital reaches 0.6 percent of their net income—in the case of Desert Springs Hospital, \$962,768—and they send the bill for the next indigent patient, George has to pay that bill at Medicaid rates. Last fiscal year, Desert Springs Hospital did not get reimbursed for the first \$962,768, but they actually got reimbursed about \$1.5 million in payment for indigent care they did provide. This bill is going to change those numbers so hospitals would have to provide more indigent care pro bono before they started getting reimbursed at Medicaid rates.

The problem, though, is that UMC is providing \$57 million in indigent care. This is an outrageous amount, and it is going up dramatically. A lot of the private hospitals are shifting their indigent patients over to UMC. We are trying to compensate for that.

Assemblywoman Kirkpatrick:

For the patients UMC is treating, how much of the cost comes from Clark County? Do we know? A lot of counties use UMC for part of their indigent care.

George Stevens:

That is true. I do not know if we actually have those statistics. A number of indigents come from other counties in the state, particularly Lincoln County and Nye County, which are close. In the event they are residents, we sometimes try to recover the money from those counties. However, in many cases, the patient has an intent to reside in Clark County, so Clark County ends up paying that bill.

Assemblywoman Koivisto:

Do you have any information in your records about how many of them are noncitizens?

George Stevens:

If they are not citizens, they do not qualify as county indigents.

Assemblywoman Koivisto:

How are they classified, then?

George Stevens:

If they are undocumented, they are not considered residents of Clark County.

Assemblywoman Koivisto:

How do you track that, then? We still pay for it, or somebody does.

George Stevens:

It is not paid through the indigent fund. It is paid as part of the county subsidy, which the county needs to make up out of the county General Fund to keep the hospital solvent. It is not directly paid as reimbursement for services rendered. It is just paid as a cash subsidy the county makes to UMC.

Chair McClain:

I guess the next question is how do the private hospitals get paid for undocumented indigents?

George Stevens:

They do not.

Chair McClain:

Do they turn them away? We can ask that when the bill gets to Ways and Means. Some of this makes sense to me and to Mrs. Koivisto, Ms. Pierce, and Ms. Leslie because we have been on the Committee on Health and Human Services before. I am still curious about the jurisdiction of this bill. Are there any other questions or comments? [There were none.] We have some other people signed in as supporting the bill.

Bobbette Bond, MPH, Executive Director, Nevada Health Care Policy Group, LLC, North Las Vegas, Nevada:

I am not speaking for or against the bill, but I want to clarify that what we have been tracking is inside the hospitals. Every hospital that has an emergency room must, by law, treat patients who come into that emergency room. Once the patient has stabilized, though, there is a growing trend, at least in Las Vegas, to transfer those patients to UMC. The private hospitals are making quite a bit of money while providing as little indigent care as they possibly can, and they are transferring those patients to hospitals that are already providing a lot of indigent care.

Three Las Vegas hospitals provide a lot of indigent care, and several Las Vegas hospitals do not. As that trend grows, there is a real discrepancy between the profits of those hospitals that are not treating a lot of indigents and the hospitals that are. This is creating a broader rift between the hospitals in Las Vegas that are doing well and those that are not doing so well.

Some committees have asked for the hospitals' profit margins, and I am sure the hospitals will be presenting those. This bill is an attempt to even that situation a bit and to prevent hospitals from transferring uninsured patients to specific hospitals and keeping the patients who are insured. I know there is another Assembly bill on the way that deals with "patient dumping," but that is really what this issue is. I do not know what the impact would be on the rurals because I am more involved in Las Vegas, but the hospitals that are already providing a lot of indigent care are going to do better with this bill than the hospitals that are not.

Chair McClain:

Thank you. Are there any questions? Is there anybody else who would like to speak in support of this bill? [There were none.] We have several people signed in to speak in opposition.

James L. Wadhams, Jones Vargas, Las Vegas, Nevada, representing Nevada Hospital Association, Reno, Nevada:

I am here on behalf of Bill Welch, President and CEO of the Nevada Hospital Association (NHA), who was called to another meeting. He may get back in time to answer questions.

This is a fascinating bill. In a way, it is a "sick tax." Perhaps more pertinent, it is taking an ever-shrinking pool of dollars and shrinking it more. Mr. Welch has passed out a PowerPoint presentation ([Exhibit G](#)). Some of the questions that have been asked may be addressed—or more questions precipitated—by going through this PowerPoint document.

As was stated by the bill's sponsor, 0.6 percent of net profit is the amount currently in statute, as it has been since the 1980s. Assembly Bill 379 proposes to raise that to 2 percent, an increase of approximately \$49 million. That is not new money; it is simply the movement of the limited dollars in the existing health care system.

The next page [page 3] is very pertinent, and those of you who have been on the Committee on Health and Human Services have seen these numbers in the past. In 2007, the total hospital uncompensated care was \$714 million. The special sessions, the 5 percent Medicaid rate cut, and the sweeping of the

Indigent Accident Fund added another \$19 million and \$25 million respectively. Assembly Bill 379 would propose another \$49 million. That is simply an additional amount of negative dollars in the overall system.

On the next page, the two red arrows are the consequential choices, of which there are only two. One is an additional cost shift. Particularly for those who do not sit on Health and Human Services, that cost shift means you have a certain number of people who actually pay and negotiate for the cost of their care, and the rest of the patients are on government-set reimbursement levels. Medicaid is the most pertinent example because it is the worst example. Current Medicaid reimbursement levels for all hospitals are approximately 50 percent of the cost of delivering those services. Medicare is a little better, but it is still less than the cost of delivering that service.

When the government programs do not pay the cost of a service, it is picked up in the private sector. The two major payers are the Health Services Coalition, which is the second-largest contingent of bodies that go through the health care system, and the United-Sierra Group, which is the largest contingent. The cost shift goes to those groups when they negotiate their contracts. This is just another \$50 million that has to go on that bargaining table because it all comes from inside the health care system.

I will not belabor the next chart [on page 5], but you can see the mix of the payers. Obviously, Medicaid, the uninsured, Medicare, and other government entities such as TRICARE—formerly Civilian Health and Medical Program of the Uniformed Services or CHAMPUS—and the like, have set payments outside of their control, so we are really forced to shift this \$50 million to that insured population.

The next chart really addresses the point Ms. Bond was bringing up. As you can see from this bar graph, the most recent numbers that are identified are the salmon pink bar—a negative operating margin of -1.75 percent. The effect of this bill will reduce that further.

The point of these charts is what I said at the outset. We are not creating new money in the system; we are simply moving more money away from the system that eventually will be passed on to that 36 percent who pay for their care.

The second-to-last page in this chart is a list of the services that have been terminated. As Mr. Segerblom points out, several of those services have fallen off first at UMC. You will also see that the Sunrise Children's Hospital is

reducing its intake, as are North Vista Hospital and Desert View Regional Medical Center. This is a problem that is partially recession-based and partially based on the reduction in these services from government sources.

We are losing access to care. Hospitals are both reducing services and reducing capacity. They are closing units. They are closing doors. They are closing rooms. This means our constituents, both in the north and in the south, will have to wait longer to get in or be transferred out of state to get those services they need.

Finally, the last page is the summary page. This is a "sick tax," but, sadly, it does not create new money. It is simply rearranging the deck chairs on the Titanic. We would encourage you not to pass this. However, we would suggest the interim committee—ably chaired this past interim by Assemblywoman Leslie—should look very carefully at how we address the maintenance of these services that are so critical to the safety net in our state, without simply pushing more of the cost onto a smaller marketplace. The worst thing we can do is precipitate a further reduction in local services.

Assemblyman Mortenson:

You say hospitals are losing money on both Medicaid and Medicare. Does the hospital not have the right to refuse to treat patients on Medicare and Medicaid?

Jim Wadhams:

Thank you; that is an excellent question. One thing that is not very well understood is that under the Emergency Medical Treatment and Active Labor Act (EMTALA), which is a federal law that applies to every hospital that has an emergency room, they cannot turn away anybody for any reason. People who come into the emergency room in emergent condition must be treated and stabilized. They cannot simply be transferred as, under EMTALA, that would be a violation of federal law.

Once the patient is stabilized, he can be transferred if the hospital he is in does not have the services he needs. There is no wholesale transfer of indigent patients to other hospitals. That would be a violation of federal law. The simple answer to your question is if you come in with an emergency situation, you must be treated at any hospital that has an emergency room.

Assemblyman Mortenson:

Is that emergency treatment paid for under Medicaid?

Jim Wadhams:

The payment for that emergency treatment can come from several sources, including private insurance and Medicaid, if the individual turns out to be qualified. Not everybody who comes in is Medicaid-eligible. Sadly, those who are eligible constitute a fairly narrow class of individuals in our state. Other indigents, both documented and undocumented, all have to be treated in the emergency room. The reimbursements rarely match the cost of the treatment that is given.

Assemblyman Mortenson:

You really did not answer my question. You said you do have to accept emergency patients, and I understand that. But does the hospital not have the right to refuse Medicare and Medicaid patients for other than emergency treatment?

Jim Wadhams:

I think the answer is yes. If anyone knows this to be wrong, please correct me, but I believe, with Medicare, a hospital is either completely in the system or completely out.

Assemblyman Mortenson:

But if all of these payments are below cost—if all Medicare and Medicaid patients cost more than the hospital gets—why does any hospital treat them?

Jim Wadhams:

I think it is because, for the last several years, there have been enough sources of payments that the cost can be effectively shifted, allowing the hospitals to fulfill their primary obligation, through the emergency room, to treat all comers. It makes very little sense to say, "If we have to take them in the emergency room, after that we can dismiss them and send them home for other care." It just does not work that way. You cannot be a community hospital and do that. That does not mean there are not some transfers. Under EMTALA, though, it can only be for a different level of care.

Chair McClain:

I think what Mr. Mortenson was getting at was that doctors can refuse to take Medicare or Medicaid patients. I think his question was whether hospitals have the same option.

Jim Wadhams:

I apologize if I have not answered that question. The answer would be yes, to a point, but not on the emergencies. Hospitals do not have that same completely independent choice that physicians do. If the patient does not come

through as an emergency, that choice may be available. However, I do not believe a hospital could make the decision on a per-patient basis with Medicare. They are either in the system or they are completely out.

Chair McClain:

I think doctors are that way, too, though. They either accept Medicare patients or they do not.

Jim Wadhams:

I believe that is correct. However, I would defer to someone with greater expertise.

Chair McClain:

They have gone through phases where they have refused.

Assemblyman Goedhart:

I am just referring to the figures for the financial impact. There must be a difference in what this covers, as there seems to be a difference between the numbers from Clark County and the numbers in your handout. You have higher numbers. Are those calculated using different parameters?

Jim Wadhams:

I am not sure where Clark County gets those numbers. We tried to analyze this for the entire state.

Assemblyman Goedhart:

As far as the cost shifting, I have seen people who want to see a specific surgeon, and that surgeon said he was not going to accept Medicare or Medicaid rates, so the patient had to pay the difference. If doctors have insistent patients whom they have seen for a number of years, they will sometimes continue to treat them on Medicaid or Medicare. However, for new patients, they may not accept those reimbursement rates. That is having a significant effect on all kinds of services being provided throughout the country.

Chair McClain:

Are there any other questions? [There were none.]

George Ross, Director, Legislative & Government Affairs, Snell & Wilmer, LLP, Las Vegas, Nevada, representing Hospital Corporation of America, Nashville, Tennessee, and Sunrise Hospital & Medical Center, Las Vegas, Nevada:

In this particular situation, the primary facility of Hospital Corporation of America (HCA) that is involved is Sunrise Hospital & Medical Center, which is

located in the inner city of Las Vegas. We also operate MountainView Hospital and Southern Hills Hospital.

As Ms. Bond, the representative of the Nevada Health Care Policy Group indicated, UMC is not the only hospital in Clark County that treats indigent and uninsured patients. It is not the only hospital of last resort. That is very important to note when looking at the impact of this bill.

In 2007, for which the most recent data is available, Sunrise Hospital provided \$88 million in uncompensated care. That is care that must be covered on the hospital's bottom line by other paying customers. It involves uninsured patients; the part of Medicaid costs the state does not cover, which is currently 35 percent to 40 percent; and the part of Medicare that the state and federal governments do not cover. That same figure for UMC is \$91 million.

Granted, that is reduced from a higher number because UMC receives a disproportionately large amount of money in subsidies from the county. In terms of the bottom line, though, Sunrise Hospital and UMC are only \$3 million apart. I do not represent North Vista Hospital, but they are the third hospital the previous speaker mentioned as treating a lot of inner-city people.

Residents of Clark County, for which the seven commissioners are responsible, do not just go to UMC. Similarly, for those of you from Las Vegas and those of you who worry about health care in our state, your constituents do not just go to UMC. This tax would, in fact, cost Sunrise Hospital \$1.5 million to \$2 million, despite the burden we are already shouldering.

At Sunrise Children's Hospital, which is a highly-rated children's hospital and an outstanding facility, 54 percent of the children are either on Medicaid or uninsured. For those children at the Neonatal Intensive Care Unit (NICU), which some of you have seen, we took a 24 percent hit with the 5 percent cut in Medicaid. A number of high-tech—mainly cardiac—pediatric functions that take place at that hospital get between 10 percent and 50 percent of the cost reimbursed by Medicaid. The rest of that we eat.

Children who cannot hear no longer have to go to the House Ear Clinic in Los Angeles to get a cochlear implant. They can get that at Sunrise Hospital. However, the implant itself costs \$28,000, and not one cent of that is paid for by Medicaid. So before we develop a bill that is essentially a tax on other hospitals to help pay the bills for the uninsured, let us realize that you are taxing hospitals that are already carrying a great deal of that burden.

Let us further look at this question of transfers. We hear a lot about this, and some of you may hear a lot more about it tomorrow in the Committee on Health and Human Services. In FY2008, 4,293 patients were transferred to Sunrise Hospital. Of that number, 2,941 were from elsewhere in the region or were from rural hospitals; the other 1,352 were local transfers. They were transferred to Sunrise Hospital, regardless of their ability to pay, because we are a high-quality, high-level hospital with high-tech abilities to treat patients with complex illnesses. During the same period of time, UMC received 1,144 transfers. Sunrise took almost four times as many transfers as UMC.

Here is one more final piece of information. I am going to say this in a certain way, because some of us have memories of the 2005, 2003, and who knows how many other years worth of health care debates at the Legislature. Sunrise Hospital is losing money, and it is losing money before corporate transfers. If you count insurance, information technology, and a lot of accounting and legal expenses, it would be much more, but Sunrise is losing money on an operating basis at this time.

The firm basically feels that, in the long-run, Las Vegas is a great place. It is a growing market, and in the long-run, the economy will turn around and things will be fine. Right now, though, Sunrise is really hurting. It seems inappropriate to us to tax Sunrise to pay for other facilities. We carry more than our share of the burden.

Finally, my client's position is that if you really want to fix the system, you need to look at the costs at UMC. Very simply, what is being asked here today is to tax the private-sector hospitals, whose costs are well below UMC's on a per-patient, acuity-adjusted basis, to subsidize UMC's inability to control its costs.

From everything I read, and from what I understand, Mr. Stevens is doing an outstanding job at that facility. This is in no way a criticism of him or the current administration. However, when they took over, they took over a hospital with a very bloated cost structure.

Before everyone else is asked to do something like this, the problem of UMC's costs needs to be addressed by either the county or by the Legislature. In the short-run, it is different; we have short-run issues. But, in the long-run, that is basically a weight around the neck of the entire health care system in southern Nevada.

Chair McClain:

Are there any questions? [There were none.] I do not see anybody else who wanted to speak. I will close the hearing on A.B. 379. We will open the hearing on Assembly Bill 479.

Assembly Bill 479: Revises the rate of taxation on moist snuff. (BDR 32-837)

Joseph Guild, Reno, Nevada, representing Altria Group, Inc., and United States Smokeless Tobacco Public Affairs, Inc., El Dorado Hills, California:

In the interim between last session and this session, Altria, the parent company of Philip Morris USA, purchased U.S. Tobacco, and that is why I am here on behalf of both companies. The bill before you, A.B. 479, does two simple things. In section 1, it defines, in statute, moist snuff, which is what you would most likely have seen in the past. It is moist, smokeless tobacco that typically comes in a 1.2 ounce can. We represent the company that makes such brands as Copenhagen and Skoal.

The reason for the definition is that other tobacco products (OTP), including moist snuff, are currently taxed in our statutes on an ad valorem basis at 30 percent of the wholesale price. In section 2 of the bill, the tax on moist, smokeless tobacco would be changed from an ad valorem rate of 30 percent of the wholesale price to \$0.75 an ounce, or an excise-tax basis. If you think of it in comparative terms, we tax such things as cigarettes and liquor on a per-unit basis, just as gasoline is taxed at X cents a gallon or X cents a barrel.

With me today is Monte Williams, who is an acknowledged expert on the difference between ad valorem and excise taxation of this particular product. He has a presentation he would like to make. I would be glad to answer questions, but I believe it might be beneficial to hear his testimony first.

Monte Williams, Partner, Shepherd, Williams and Associates, LLC, Sacramento, California, representing United States Smokeless Tobacco Public Affairs, Inc., El Dorado Hills, California:

I am offering testimony here today in support of A.B. 479. I am representing United States Smokeless Tobacco, which is an Altria company. As Joe said, they are the makers of Copenhagen and Skoal, but they also make other brands, such as Red Seal and Husky.

My opinions today are based on a 30-year career with the State Board of Equalization in California. I held the positions there of Chief of Excise Taxes and Chief of Criminal Investigations. I have over 20 years of experience in tobacco tax administration at the state level. I have also participated at the

federal level with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Since leaving government nearly four years ago, my practice has been almost exclusively in tobacco issues, mostly related to taxation.

The ad valorem system of taxation—the percentage of the wholesale price—in Nevada and throughout the country is a broken system. It has worked well for the states that adopted it, but, in the last five to six years, that system is no longer functioning as it previously did for the states. The states, including Nevada, are leaving much tax revenue on the table because of the ad valorem system, and it allows companies to dictate how much tax they will pay on their products rather than the state dictating how much tax will be due on their products.

Excise taxes, as Joe said, are typically a unit or a measurement tax—a consumption tax, if you will. They are there for a specific purpose—either damage to the state's economy, the state's resources, or for some other issue. That is why, when you go into a gas station to buy gasoline, whether you buy premium or regular, you pay the exact same excise tax. There is no difference in the damage you do to the highway whether you are using regular or premium. That is what that tax is used for.

Alcohol tax is basically the same thing. It is a per-unit tax, whether it is on a premium product or a cheap brand. Cigarettes are taxed by the stick. Whether you buy a premium brand or a cheap cigarette, you pay the same amount of excise tax.

By contrast, the sales tax is a completely different issue. It has always been a tax on the price of the product, where you pick up the differential on more expensive products versus cheap products. When Nevada adopted its other tobacco products tax, which is everything but cigarettes, in 1984, it did so in a marketplace that was very diverse but very stable. For example, the category had many things in it: cigars; moist, smokeless products, which make up the largest segment of that category; pipe tobacco; roll-your-own; plug; twist; chew; and other products.

In 1984, all wholesale prices for moist, smokeless products were basically the same. Premium product was the only type being sold at that time. By applying a percentage to this diverse category, you basically got the same amount on every can of moist, smokeless products sold, which is the definition of excise taxes.

However, that system and that marketplace are no longer in existence today. Many new brands have been introduced into the marketplace, all at the

cheap level. There are all different kinds of pricing points now. For example, Timber Wolf was introduced, which was the first other-than-premium-brand product. It was introduced at a mid-tier price value level. It stayed that way for awhile, but then, in 2004, it cut its prices by 40 percent to reduce its tax liability. Your tax revenue also went down by 40 percent at the same time.

Since 2001, deep discount brands have been introduced and are taking over a significant portion of the market. These all end up paying less tax on each can because they sell for less, so the state gets less money on every can sold versus a premium-price product. Today, premium product in Nevada constitutes about 79 percent of the market. These cheaper brands have risen from 5 percent to 21 percent of the market in just the last seven years, and the growth factor gets larger every year.

As these cheaper brands get a larger and larger market share, your average price per can goes down. This means your average tax goes down. That is not the case with cigarettes; no matter what they sell for, you get the same amount of revenue per pack.

Today, there are 16 different pricing points from premium to discount. About 90 percent of this product is marketed as 1.2 ounce cans. However, the tax can vary widely between \$0.29 on a can to \$0.72 on a can. With cigarettes, on the other hand, you get \$0.80 on every single pack.

Moist, smokeless tobacco (MST) companies can lower the tax liability on their products simply by changing their prices. It is simple math: the lower the price on the product, the less tax they have to pay to the state, which gives them a competitive advantage at retail. They can also manipulate the marketplace by offering such things as value packs and two-for-ones. This lowers the wholesale price which, in turn, lowers the revenue to the state.

As a result of these marketing strategies, the state has no say-so in this revenue decrease. It simply has to go along with it, because that is the method by which your tax is applied. Another product cut its value by \$1 a can, and \$0.30 was lost in tax on each can sold in this state.

We agree that competition is a good thing. But we also believe the tax policy for excise taxes on these products should be neutral, just as it is on all other excise taxes on products. Competition is a good thing, and we are willing to compete against any company based on product and price. However, we do not like competing against the tax system, as we have to do in ad valorem states. It allows other companies to manipulate their prices and lower your revenue.

People say you do not want to give up an ad valorem system because, as prices go up, you get more money. If this were the year 2000, I would have to agree with that. Since 2004, though, in every state across the country, the average price of a can has gone down every year. The average wholesale price of a can has gone down 6 percent since 2004. Nobody's price is going up; all the companies are cutting their prices overall in order to be competitive.

This was strikingly illustrated about two weeks ago when Altria announced a price cut in Copenhagen and Skoal products. The Conwood Company followed suit with their cuts on their premium products, Kodiak and Hawken. Prior to that time—that price decrease—Skoal and Copenhagen had not taken a price increase in over three years because of the competition in the marketplace. Kodiak and Hawken had not had a price increase in two years.

That price decrease alone on these products will cost the State of Nevada nearly \$1 million during the next fiscal year because it taxes on a percentage of the wholesale cost. Basically, 10 percent of your total category revenue is going to disappear next year because you taxed on a percentage of the cost.

By contrast, a weight-based tax is more fair. It brings in more revenue to the state. It charges the same amount of tax on each can no matter what brand it is or what the price structure. The same amount of excise tax will be paid on each one. It is uniform. If you do nothing about this situation this year, the state will lose over \$1.6 million in revenue due to price decreases because you tax on a percentage.

Weight-based taxes are fair in the marketplace. Everybody pays the same amount, just like they do on cigarettes, gasoline, and alcohol. There is no reason any state should do it any differently. People can come up with a \$0.49 can of product at retail because it is taxed on a percentage basis. If your tax is on a weight basis—\$0.75 an ounce, as Bill proposes—the tax on this can would be \$0.90. You are not going to be able to retail it for \$0.49. All the companies do this, not just this company. United States Tobacco has done it, too, and so have the others, because it is a market issue. They manipulate the system by doing that.

If you have a weight-based tax system, this cannot be done. Your revenues are stable; you know how many cans will be sold, and you will get so much a can. That is your revenue. You do not have to worry about market fluctuations.

Sixteen states now tax these products on a unit- or weight-based system, as does the federal government. Ten of these states have changed since 2006, and two of them have already changed this year. That is an indication to you

that this system is not working in the other states that have it, and they are moving away from it.

You will hear a lot of arguments against a weight-based tax: "The system is working fine; just leave it alone." I think I have illustrated that the system is no longer working as it was intended, and it is costing the state money. You will also hear, "This is only a company fight. U.S. Tobacco wants to keep its premium market share."

United States Tobacco has products in all the categories: premium, mid-tier, and low-level. Whatever happens with this bill happens to U.S. Tobacco just as it does to everyone else. What we are asking for is a level playing field rather than a playing field where cheaper products get a benefit in the marketplace.

You will also hear there are new, lightweight products coming out, and that is where the industry is going. I would like to address a couple of points on that issue. There is no market for these products. They are out there; there is no question of that. The companies are testing them. These products have been tested for several years now, and they do not have a measurable market share anywhere in the country. However, while these products are being tested, the market is growing for the other products in the category—the regular products.

It is not as though people are going to switch to these new products exclusively. That is not going to happen. It is just something being proposed by people who are looking for a problem that simply does not exist today. You do have a problem today with a revenue hole—an unintended loophole in your system—because you tax on a percentage. This bill will fix that.

I would point out that I was here two years ago on this issue. Since 2007, a couple of things have changed. The number of pricing points of these products—meaning new products introduced—has changed from 8 to 16. The number of states converted has, as I said, gone from 8 to 16. Your wholesale price has dropped another 3 percent since 2007, and your annual revenue loss, by not going to a weight-based tax, has gone from \$600,000 a year to \$900,000. That is nearly \$1 million a year. By not acting on this two years ago, Nevada has left on the table more than \$1.5 million in revenue.

Ad valorem taxes are broken and antiquated. You are leaving money on the table, and you are going to lose more revenue due to these price decreases that just occurred. That is a fact, and doing nothing will not change it. Assembly Bill 479 will fix this current system, will allow you to tax in a manner that gives the state a more stable and increased stream of revenue, will take the state out of the marketplace, and will not allow the selling of products at these

extremely cheap levels—and I think we all know where those are going. It will close this unintended loophole. I strongly urge you to approve A.B. 479 and adopt a weight-based system.

Assemblyman Gustavson:

After listening to your testimony, I do understand your point and where you are going with this and the equality you are seeking, but, in reality, this really does affect the poor person who cannot afford more expensive brands. In reality, if they are buying the less expensive brands, they are getting a tax increase. Is that correct?

Monte Williams:

Yes, it will raise everyone to the same level. All products will get a tax increase under this proposal, including the premium products. But you are right; it will have a larger impact on the cheaper products.

Chair McClain:

In the bill, what is tobacco that is intended to be placed in the nasal cavity?

Monte Williams:

It is a dry, powdered form of tobacco. It still exists today, but I could not tell you where to buy it or how many people are still using it. These are definitions that have been in the statutes for many years. I have never even seen a can of it.

Chair McClain:

Then my next question is what are these defined as? [Holds up a package of snus.]

Monte Williams:

Those would be defined as smokeless tobacco products.

Chair McClain:

But they go one step farther; they are also spit-free. Also, they weigh nothing. What kind of tax are we going to get from these things? This weighs something like 0.335 ounces.

Joe Guild:

That is the product Mr. Williams was referring to that has virtually no market share. However, it would be taxed at \$0.75 on whatever weight it is.

Chair McClain:

This would bring in about \$0.25. There may not be a market now, but look at the trends in this country. Look at the effect the federal government had on cigarettes and other tobacco. You will have a lot of people giving up smoking tobacco, and they are going to be looking at things like this.

Monte Williams:

I agree there will be people looking at these products, but this product currently on the market [holds up can of chewing tobacco] only pays \$0.26.

Chair McClain:

Let us be realistic. What woman is going to put that stuff in her mouth? But if she wants to give up smoking cigarettes, blowing smoke on everybody else, and getting harassed, this snus looks like a great option to a lot of people.

Monte Williams:

One thing about excise tax is, if you buy only half a gallon of gasoline, you pay half the excise tax. If you buy a product that is much lighter, under a weight-based system you would pay a proportional amount of excise tax based on that product. It is based on the tobacco content, and that is what makes the weight.

Chair McClain:

I am not trying to argue; I just want to make a point. These [snus] have little individual packets. Maybe we should tax these like we do a pack of cigarettes. You get charged on 20 units in a pack of cigarettes. These have 20 dissolvable tobacco pieces. Maybe we need to look at the whole structure of tobacco taxes in general.

**Samuel P. McMullen, Partner, Snell & Wilmer, LLP, Las Vegas, Nevada,
representing Altria Client Services, Inc., Sacramento, California:**

Our answer on the issue of snus, the pouch, or anything is similar to what it was two years ago, which is we have no doubt the Legislature, in its creativity, would find a way to tax different products the way they are intended to be taxed. What we are trying to give you today is our history with this weight-based tax and the kinds of cans we have now with loose tobacco—not pouched, not nicotine tablets, or whatever. We have found the market has changed, the world has changed, and it is time to look at a different way to tax this.

I do not know if this bill handles all of the issues that may come up. We may find that these other products take off. They do not seem to be doing that now at all. However, if they acquire a substantial market share that deteriorates the tax base, I do not think there is any question there will be some creativity by the state about which products should be taxed in certain ways.

The point is that now, two years later, those products have been on the market, have been market tested, and are being promoted by all companies. They are just not grabbing market share. When they do, I think that will definitely be an issue for you to address.

Joe Guild:

No matter, if the system is not changed and this product you just showed us is taxed on an ad valorem basis, even if it grabbed a larger market share, it would have to be sold at a fairly high price with a fairly high wholesale price to take care of the problem Mr. Williams pointed out, which is that the state is losing money on the ad valorem system these products are taxed under now. Just to put a little finer point on that and . . .

Chair McClain:

I am wondering how these [snus] are taxed at all. It is not considered snuff?

Joe Guild:

Yes, it is; it is an OTP. Therefore, under our current system, it is taxed, on an ad valorem basis, at 30 percent of its wholesale price.

Sam McMullen:

One of the issues raised last time that I think is worth talking about is youth access under the current taxation system. You will hear, and it has consistently been argued, that this is just a squabble between companies over market share. That may actually be true.

We want to point out the three policy concerns that are separate and apart from market share. First is the cost to government of administering the tax. A weight-based tax should be cheaper to administer. Second is revenue stability. Third is youth access. The issue is that discount brands are subsidized by lower taxes, and they are easier and cheaper for minors to purchase. This is a very serious issue for Altria, Philip Morris, and U.S. Tobacco.

It is true you subsidize market share when we discount. That is why the revenue continues to go down. But when you do that, you also subsidize youth access. Youth access most importantly, in all the studies that have been done, is a function of price. They can want all the brands in the world, but they buy what they can afford, and they buy the cheaper brands. We are seeing something like quadruple growth in the discount brands.

The issue is that while we are out battling on price, we are also using the tax to make it easier for youth to purchase these products. Consequently, we just want to continue to make the point that reducing youth access is an important goal for us and an intended consequence. It actually makes the test for youth access tax-neutral. I know you will hear a lot of concerns about market share, but those three issues are the ones we think are the policy issues for you to decide.

Chair McClain:

Thank you. Are there any questions? [There was no response.] We have some people signed in who would like to testify in opposition. Let us go to Las Vegas first.

Christopher Roller, Director of Advocacy, Western States Affiliate, American Heart Association, Las Vegas, Nevada:

I just want to say that the American Heart Association is opposed to A.B. 479. This type of bill is being considered in various other states across the country. We believe that, in the long term, it is going to increase addiction to tobacco products, especially among youth. The tobacco companies are shifting toward the lighter-weight products such as you displayed earlier. This type of legislation fits well into their business model, which includes a planned shift to these products. While they do not have a large market share now, the hope of companies like U.S. Tobacco and Altria is that they will in the future. That is why we oppose this bill.

Mr. McMullen talked about youth access. Our concern is that, as there is a shift to these smaller, lighter-weight products, they will become more accessible to youth because the taxes on them will be lower through the weight-based tax. I think Altria knew what it was doing when it bought U.S. Smokeless Tobacco. It knew there would be a shift to these products because of clean indoor air laws and the other reasons there is a shift away from smoking and toward the smokeless tobacco products. Revenues, in the long run, would shrink because of the shift toward the lighter-weight products.

Jennifer Stoll-Hadayia, MPA, Public Health Program Manager, Washoe County District Health Department, Reno, Nevada:

I know this is the Committee on Taxation, and my opposition to this bill is in regard to health, so I will be brief. I provided a copy of my testimony today ([Exhibit H](#)). To put it simply, we oppose A.B. 479 because research and state experience have shown that shifting to a weight-based smokeless tobacco tax structure provides an incentive for manufacturers to reduce the weight of their product.

This makes the product cheaper, increases sales, and increases the addiction to tobacco. Research shows that 60 percent of smokeless tobacco users will become cigarette smokers within two years. In that way, smokeless tobacco often serves as a gateway to cigarette use.

Right now, use of smokeless tobacco in Nevada is low compared to cigarette smoking. Four percent of Nevadans report using smokeless tobacco, and that rate is actually even higher in our rural counties. It is interesting to note that 1 percent of Nevadans are using snus, by name. There has been discussion here of market share of these lower-weight products, but a significant number of our residents are currently using it and can cite it by name.

I want to point out how much lower the weight has become on these lighter-weight products in a very short time regardless of how they work or what they are, whether they are tablets or film or what have you. A can of pouches a couple of years ago weighed 0.47 ounces. A can of that product purchased today weighs 0.32 ounces. The weight is dropping, and that would have a significant impact in terms of cost and accessibility to youth. We are concerned it will drive up the percentage of those using smokeless tobacco at this time. We oppose this bill, obviously, for its potential detriment on the use of tobacco in our state and all of the very significant negative health consequences of tobacco that we are all well aware of.

Alfredo Alonso, Lewis and Roca LLP, Reno, Nevada, representing Conwood Company, LLC, Winston-Salem, North Carolina:

I will not echo any of the comments of the previous speakers regarding the purchase of this type of product by minors. Obviously, we were all kids at one time. The issue is not about price but what you are purchasing. When my friends and I tried these products as kids playing baseball, we always went for Skoal or Copenhagen because that was the cool thing to do in those days. Clearly, that has not changed much.

We debated this policy issue last session in both houses. In both houses, neither committee chose to act on it because we have a dilemma. Why would the largest tobacco company in the world come to you and offer to help with your tax policy problems? Why would the company that has 93 percent of the smokeless tobacco market offer its help?

It is a simple issue of big versus small, of market share versus those that are eating into that market share. In Nevada, 93 percent of the premium-priced moist snuff is currently produced by Altria and Philip Morris USA. There is something interesting about this from the standpoint of how you are taxing OTP. You have heard that many of these products are becoming lighter and therefore can be manipulated by the manufacturer, which is an issue in itself.

However, as a matter of policy, if these types of tobacco products are not yielding enough right now, you already have a mechanism to deal with that. On top of that, you have ad valorem, which, as those prices change over the years, does not require legislative change. That tax increases accordingly. This would be no different.

The best analogy would be taking a Toyota and a Mercedes Benz and taxing them on their weight. It hits those hardest who can afford it least, and in the end, it is an artificial means of lowering the tax on those that are the most expensive. It is simply unfair.

This company has made a policy of going around the country, state to state, telling everyone their tax system is broken. This is not new. This is a travelling show they have been taking everywhere.

We oppose this bill for various reasons. If you raise the tax here, it can be manipulated later, and your revenues can actually go down. There are actual studies that show that has already happened in a couple of states.

[Nicole Truax Chacon, Tobacco Control Health Educator, Southern Nevada Health District, Las Vegas, Nevada, submitted prepared testimony and two papers: "Flaws in a Weight-Based Smokeless Tax System" from the Tobacco Public Policy Center at Capital University Law School and "The Best Way to Tax Smokeless Tobacco Is With a Percentage-of-Price Tax" from Campaign for Tobacco-Free Kids ([Exhibit I](#)). However, she was unable to stay to testify.]

Chair McClain:

Okay, does anyone have any questions? [There were none.] Is there anyone else who would like to speak on the bill? [There was no response.] I will close the hearing on A.B. 479. I would like to move this out with no recommendation and rerefer it to Ways and Means because of the tax implications. We have an exemption on it. Who would like to make a motion?

ASSEMBLYWOMAN KOIVISTO MOVED TO REREFER
ASSEMBLY BILL 479 TO THE ASSEMBLY COMMITTEE ON WAYS
AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair McClain:

We have two bills left on Thursday's work session, and then we can go celebrate. We are adjourned [at 3:22 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: April 7, 2009

Time of Meeting: 1:41 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 369</u>	C	Michael Nakamoto	Mock-up of proposed amendment
<u>A.B. 379</u>	D	Assemblyman Segerblom	PowerPoint presentation of prepared testimony
<u>A.B. 379</u>	E	Assemblyman Segerblom	Proposed amendment
<u>A.B. 379</u>	F	Assemblyman Segerblom	Tables showing hospitals' costs for uncompensated care with and without the bill
<u>A.B. 379</u>	G	Bill M. Welch, President and CEO, Nevada Hospital Association, Reno, Nevada	PowerPoint presentation in opposition
<u>A.B. 479</u>	H	Jennifer Stoll-Hadayia	Prepared testimony
<u>A.B. 479</u>	I	Nicole Truax Chacon, Tobacco Control Health Educator, Southern Nevada Health District, Las Vegas, Nevada	Prepared testimony and two papers: "Flaws in a Weight-Based Smokeless Tax System" from the Tobacco Public Policy Center at Capital University Law School, and "The Best Way to Tax Smokeless Tobacco Is With a Percentage-of-Price Tax" from Campaign for Tobacco-Free Kids