

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-fifth Session
May 5, 2009**

The Senate Committee on Taxation was called to order by Chair Bob Coffin at 1:42 p.m. on Tuesday, May 5, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Bob Coffin, Chair
Senator Terry Care, Vice Chair
Senator Michael A. Schneider
Senator Maggie Carlton
Senator Randolph Townsend
Senator Mike McGinness
Senator Maurice E. Washington

COMMITTEE MEMBERS ABSENT:

Senator Terry Care, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Alfredo Alonso, Lewis and Roca LLP
Leif Reid, Nevada Beer Wholesalers Association; Southern Wine and Spirits
Jesse Wadhams, DeLuca Liquor and Wine

Senate Committee on Taxation
May 5, 2009
Page 2

Matthew Q. Callister, Chateau Vegas Wines, Inc.; Transat Trade, Inc.
Guy Azera, Chateau Vegas Wines, Inc.
Robert L. Crowell, Anheuser Busch Companies
Stephenie Shah, Director, Government Affairs, Anheuser Busch Companies
Keith L. Lee, Distilled Spirits Council of the United States
Michael Sullivan, Wine Institute
Katie Jacoy, Western Counsel, Wine Institute
Lance W. Hastings, Director, State Government Affairs, MillerCoors
Dino DiCianno, Executive Director, Department of Taxation
Carole Vilardo, President, Nevada Taxpayers Association
Michael E. Skaggs, Executive Director, Commission on Economic Development
Wes Henderson, Nevada Association of Counties

CHAIR COFFIN:

We will open the hearing on Assembly Bill (A.B.) 378.

ASSEMBLY BILL 378: Revises provisions governing distributors of intoxicating liquor. (BDR 32-894)

ALFREDO ALONSO (Lewis and Roca LLP):

Assembly Bill 378, section 1 is revised language due to what has happened in the marketplace over the last few years and recent litigation which has caused us to clarify it legislatively. The remainder of the bill deals with building a business and transferring ownership upon the death of the owner. The last two sections deal with buying a product and selling the product for the price that you wish.

LEIF REID (Nevada Beer Wholesalers Association; Southern Wine and Spirits):

The suppliers, or associations representing suppliers, that will testify today are partners with the clients we represent. On many issues, we recognize a mutual necessary relationship that exists between us, even in our disagreements in good faith. There are two principles that you will hear from us and from the opponents of the bill. These two areas are bedrocks of Nevada law. First is the three-tier system. Suppliers do not engage in the business of wholesaling, retailing or importing alcoholic beverages in the State. Second is the primary source law. There are authorized distribution systems in Nevada. We have a system where suppliers designate wholesalers, and the wholesalers are the only ones that can distribute their products. This proposed modification for *Nevada*

Revised Statutes (NRS) 369 and NRS 597 come to you with those principles in mind. During the 2003 Session, the law was tightened to ensure further restrictions on gray market products. During that same session, a law was passed to prohibit practices that Chateau Vegas Wines was engaging in. A course of litigation followed in which courts in this State permanently enjoined this distributor to ensure that unauthorized distribution of products does not occur in this State.

Section 1 of this bill is a continuation of that policy. This section allows authorized wholesale distributors, designated by the suppliers in this State, to meet retail customer demand by intracompany transfers from warehouses the company maintains outside the State of Nevada. This is an important addition to the protections put in place in 2003 because of what happens when the authorized wholesaler is unable to meet casino, restaurant or customer requests for a product. That is when the gray marketeers move in and make unauthorized sales to meet demand. It has been said this section will create a fourth tier to expand the three-tier protections. We do not agree. The bill only allows shipments of authorized product to the designated wholesaler by the supplier under timely compliance with excise tax filings to the Department of Taxation. It allows business as usual but adds the additional protection to prevent a gray market.

The next sections of the bill focus on enhancing protections that exist for wholesalers. We view them as a continuation of the legislative policy set forth in NRS 597.190—a statement of legislative policy enacted in 1975—which says the provisions in NRS 597 are franchise laws, primary source laws, existing to protect Nevada business. These companies we represent are family-owned businesses that would be protected from coercive control of suppliers. We agree that suppliers should have control over who they do business with, and there are existing protections in NRS 597.155, subsection 1, paragraph (j). In section 3, subsections 2 and 3, we are expanding protections for wholesalers operating in the State to deal with tragic situations such as a death in the family, allowing the change of control to occur within the family or to an existing partner in the business.

Section 4 deals with the consolidation and mergers of businesses. With the consolidation, there have been proposed changes in distribution agreements. Nevada's Attorney General ([Exhibit C](#)) wrote to MillerCoors in the context of proposed changes to their distribution agreement to inform them of provisions

that were problematic under our statutes. The provisions in section 4 clarify some of the issues with respect to pricing. In [Exhibit C](#), the Attorney General has stated that suppliers would be in violation of Nevada law when transportation costs go up and a local wholesaler would increase costs to recapture some of the increase. The new language clarifies this even more. Other provisions in section 4 relate to pricing and issues addressed in [Exhibit C](#).

JESSE WADHAMS (DeLuca Liquor and Wine):

We are in support of this bill. I would like to point out a couple of provisions to us. DeLuca is a family organization, and owner Ray Norvell should be able to transfer the business to any family member if the circumstance should arise. The clarification regarding the relationship with our suppliers is important as pointed out in [Exhibit C](#).

SENATOR CARLTON:

Mr. Alonso, you mentioned this issue was part of litigation that has been going on for some time, and you wanted to clarify where you stand.

MR. ALONSO:

As a result of the litigation, we have been asked to revisit the issue. Nevada is different than all the other states. When a retailer that sells the products requested by our tourists cannot readily supply it then someone else will. If a company has the exclusive contract with a supplier and they are out of product, we may not accommodate the tourist and they will look elsewhere.

SENATOR CARLTON:

Is the litigation ongoing or has it been resolved?

MR. REID:

I was the lead trial counsel in that matter and can speak with as much detail as you would like about the litigation. There was a permanent injunction issued by Mark Denton, District Judge, Department 13, Eighth Judicial District in Clark County. This litigation was prior to the 2003 amendments that were enacted. That order has been appealed and will be heard by the Nevada Supreme Court.

SENATOR CARLTON:

It is still an ongoing matter?

MR. REID:

It is, but the litigation involves issues much broader than what is in this bill. The provision that relates to this litigation is section 1 of A.B. 378 which is a small issue in the broad context of the litigation. Guidance received from the Department of Taxation in 1990 showed limited occasions in which Southern Wine engaged in the intracompany transfers from one warehouse to another. The issue came up concerning intracompany transfers, and the practice ceased after seeking more current guidance from the Department of Taxation. We bring this matter before you to get legislative approval for authorized wholesalers to receive product purchased from suppliers, stored in warehouses out of the state to meet retail demand in Nevada. In the past, the locations outside of the State were licensed by the Department of Taxation through a certificate of compliance process.

SENATOR CARLTON:

This legislation under section 1 would impact that litigation?

MR. REID:

It would not.

SENATOR CARLTON:

If the Legislature opines on a practice in the middle of litigation, you would have a card on your side that the other side would not have. You could use the passage of this as substantiating your case

MR. REID:

The matter involved in the litigation was which entity has the right to distribute which products in Nevada. The products at issue were high-end champagne and some Bordeaux wines. This legislation would not impact the decision that District Judge Denton rendered in this case. It would not impact the forthcoming decision by the Nevada Supreme Court. This would not in any way give one side an extra card or an upper hand in a private dispute.

SENATOR CARLTON:

I am not comfortable with that. When something is in litigation and another statute passes, when we leave town, we do not know the future arguments that are going to be made. If you housed this in Nevada, there would not be a problem. It is because it is in California that we have a problem. If the warehouse was in southern Nevada, this would not be an issue?

MR. REID:

These products are primarily warehoused in Nevada. That is not the issue. The issue is that when there is high demand during the course of the year, there may be small interruptions in supply. Gray marketers step in to meet retailer demand when we can not supply it.

CHAIR COFFIN:

Like Senator Carlton, I have seen legislation brought to affect litigation. I see no mention of retroactivity provision or an "immediate passage and approval" clause which is frequently used to try to affect ongoing litigation. I cannot imagine your involvement with something like that, Mr. Alonso.

MR. ALONSO:

There is no intent with this bill.

MATTHEW Q. CALLISTER (Chateau Vegas Wines, Inc.; Transat Trade, Inc.):

As with the 2003 and the 2005 amendments, this piece of proposed legislation was entirely directed to the lawsuit now before the Nevada Supreme Court that in large part is untried as to monetary damages. I would like to read from the 2003 legislative minutes when the definition of supplier was changed after the lawsuit was brought against Southern Wine and Spirits. This is a quote from former Chair Barbara E. Buckley of the Assembly Committee on Commerce and Labor:

I recently reviewed the history of the three-tier system. It was instituted after prohibition to make sure that liquor stayed out of the hands of minors. The three tiers are manufacturing, distribution and retailing. It was also to ensure that there weren't monopolies in the sale and distribution of liquor.

Ninety percent of all the liquor in the State of Nevada is vended through DeLuca Liquor and Wine and Southern Wine and Spirits. This lawsuit and legislation is attempting to eliminate that last 10 percent controlled by others.

The lawsuit *Southern Wine and Spirits v. Chateau Vegas and Transat Trade*, Clark County Dist. Court Case No. A460811 was tried in part in regard to the declaratory relief portions that District Judge Denton determined as the intent of this legislative body in 2003 and 2005 to turn 180 degrees from what I just read. In other words, allow monopolies to be created. That is the status of the law in Nevada. The ruling by District Judge Denton in the 2003 amendment

coupled with the private right of action gives the private rights to individual licensees. This body has decided that changing the definition of a supplier and allowing the designation of a sole agent lets Southern Wine and Spirits say they are the only designated agent to sell this product in the State of Nevada. This started years ago when Southern Wine and Spirits went to France and talked to manufacturers of high-end premium products and convinced them to give Southern Wine and Spirits an exclusive contract to only allow exportation to Nevada through their company. That is fair contract law, but when the monopoly is supported by changes in State law that gives your competitor the right to drive you out of business, we have inverted 80 years of post-prohibition law. That is what we are appealing to the Nevada Supreme Court.

GUY AZERA (Chateau Vegas Wines, Inc.):
I have prepared testimony ([Exhibit D](#)).

MR. CALLISTER:

The point he is trying to make is that Harvey Whittemore appearing on behalf of Southern Nevada Wine and Spirits and the July 15, 2008, advisory opinion in Department of Taxation documents ([Exhibit E](#)) from Executive Director Dino DiCianno suggest if A. B. 378 passes out of this body, it needs a rereferral to the Senate Finance Committee because it will have a fiscal impact.

MR. AZERA:

In conclusion, refer to page 6 of [Exhibit D](#).

CHAIR COFFIN:

What brands do you carry? In this post-2003 environment, have you been denied access to brands for your business?

MR. AZERA:

Yes. I was sued and the lawsuit was amended to add five new chateaus from Bolo and another claim for ten other estates. In order to prevent more litigation costs, I stopped carrying those wines under threat of another restraining order or that going back to court.

Senate Committee on Taxation
May 5, 2009
Page 8

CHAIR COFFIN:

You did not name the brands; would you submit them to us? This information is needed for Legislators to fully understand the impact of legislation.

MR. CALLISTER:

I will see you get the information.

SENATOR MCGINNESS:

Did you indicate you had a warehouse out of state?

MR. AZERA:

Yes. The name of the company is Transat Trade, Inc., a California corporation. During this litigation, I was accused of being a supplier and an importer in Nevada. These are different corporations; one is a Nevada corporation and the other a California corporation.

SENATOR MCGINNESS:

What is the reason you have a California warehouse?

MR. AZERA:

When I started my business, I had no intention of coming to Nevada to be a distributor. I had two distributors that went out of business. Because we had customers in Nevada, I started Chateau Vegas Wines.

ROBERT L. CROWELL (Anheuser Busch Companies):

We are opposed to this bill, and our major concerns are with the second half of the bill. We agree with Leif Reid in that we consider our wholesalers in Nevada our business partners and appreciate what they do. We have an amendment that has been shared with the proponents of this bill. They have not accepted the amendment, and we would like to cover the amendment.

STEPHENIE SHAH (Director, Government Affairs, Anheuser Busch Companies):

Our concerns are with the second half of the bill. I will take you through the amendments we have submitted for consideration ([Exhibit F](#)). If these amendments are not accepted, we remain opposed to the bill. Our concern is the section 3, subsection 1 provision that states "a supplier shall not unreasonably ... delay ... approval" We oppose the word delay. We intend to be reasonable in our actions. We are concerned this could be interpreted in a way that inhibits Anheuser Busch's ability to collect additional information as

necessary to complete the transaction. The second concern has the potential of affecting our match right under our contractual equity agreement with our wholesalers. We have proposed new language which would allow us to retain our match right to assign a qualified wholesaler in the event the wholesaler considered is not qualified to be the distributor of our product.

We would remove the section 3, subsection 4 language from the bill because NRS 597.170 already provides that a wholesaler may recover damages, so this provision is unnecessary. Section 4, subsection 3 gets into the pricing of our product with our wholesalers. This is an issue between our partners because we view our relationship with our wholesalers as a partnership. This should not be considered in the legislative arena; the bill could have the affect of limiting our ability to change our prices to the wholesalers and could increase costs to consumers.

KEITH L. LEE (Distilled Spirits Council of the United States):

We represent 80 percent of the distillers and marketers of hard spirits and alcoholic beverages in the United States. We are here in opposition to A.B. 378 as written and proposed. The detail of our opposition is presented in my written testimony ([Exhibit G](#)). We are dealing with a different situation from many when talking about contractual relationships between parties. We are dealing with alcohol and the Twenty-first Amendment to the *Constitution of the United States of America* that repealed prohibition many years ago. It gave the states the authority to control how alcoholic beverages are brought into a state, how it is wholesaled, how it is distributed at the retail level in a state and how it is taxed.

We are also talking about franchises when the relationship between the franchisor, supplier and the franchisee wholesaler has many different variations from the usual contractual relationship. Section 1 of the bill creates a fourth tier which benefits multistate wholesalers to the detriment of the small liquor wholesaler in the State of Nevada. If you pass this bill in its present form, it would create a fourth tier—a multistate manufacturer tier—that permits a licensed wholesaler in one state to transfer goods across state lines into its Nevada wholesale operation. We have provided a July 15, 2008, advisory opinion in [Exhibit E](#) from the Department of Taxation; the paragraph titled “Background” sets the exact factual situation proposed in this bill.

The "Conclusion" paragraph in [Exhibit E](#) states, "... intra-company transfers are contrary to the logical interpretation of the statutes and [the wholesalers] should cease and desist" Our opposition to section 1 in [Exhibit G](#) describes that one of the functions of the three-tier system is to require the supplier and importer to separately account to the Department of Taxation for all liquor the supplier sells to the wholesaler. It gives the Department of Taxation the ability to confirm taxes paid by the wholesaler. If the Legislature adopts sections 3 and 4 of the bill, you would be asking us to change our contracts with current wholesalers. One of our problems with section 3 is that under the constraints proposed, it would be impossible for a supplier to change wholesalers. Under NRS 597, there are sufficient protections in the law to protect the wholesaler. Our problem with section 4 is that the wholesale relationship is a franchise relationship. Building a brand product with cost and marketing are important because that is how we get our product into the market. Section 4 takes away our ability to set prices, which is important to us.

SENATOR MCGINNESS:

Ms. Shah you talked about a qualified buyer. If I am a distributor, do I have a list of your qualifications if I want to seek a buyer?

MS. SHAH:

I am not aware of a list, but we would have open dialogue with our wholesaler about what constitutes a qualified buyer.

SENATOR MCGINNESS:

Mr. Lee, you indicated something about qualifications as well. Do you know if your counsel has a list of qualifications for a wholesaler?

MR. LEE:

I am not aware of the list, but I can get the information for you. This would be a matter of mutual discussion. As the supplier, we want to make sure we have a wholesaler who is qualified and happy to do business with us.

MICHAEL SULLIVAN (Wine Institute):
We are in opposition to this bill.

KATIE JACOY (Western Counsel, Wine Institute):

We are a public policy organization, and we are opposed to all the sections of A.B. 378. With regard to section 1, we heard proponents of the bill say it is

proposed to address small interruptions in supply that are needed occasionally. What is written is far broader. For wineries, it takes away our ability to control the supply into the Nevada market. In the current three-tier system, the winery sells market-specific products to their wholesalers, and they price the product allocated for that market. It permits the wholesaler to bring in products from warehouses in another state. It may have been purchased at a lower price and under different terms because we negotiate contracts with wholesalers on a state-by-state basis. This is important for the wineries to maintain so we know that wherever we are selling our product, it will be sold to retailers in that state. This legislation takes away our ability to do that. I would like to read one quote from the Department of Taxation letter, [Exhibit E](#). If this bill is passed with section 1 as is, the situation will exist, "Allowing an entity which is one and the same as the importer to act as the supplier, is akin to putting the fox in charge of the hen house."

Today's testifiers spoke about the gray market filling the void; however, I was confused by the testimony because they also said they have been engaging in this practice which the Department of Taxation said they could not. I do not understand how the gray market came into play at all because they were fulfilling their needs from outside warehouses. We are also opposed to sections 3 and 4 of the bill. The proponents said this was to address small family businesses as well as problems in the beer industry. We are the wine industry, and I have not heard of any problems with members of my association. These protections are necessary for the wholesale tier with regard to our wineries.

SENATOR SCHNEIDER:

It has been testified that this creates a four-tier system. Our current three-tier system was created after prohibition, so do we need a three-tier system?

MS. JACOY:

I appreciate the question from the wine industry perspective. There are exceptions to the three-tier system; in some states, those exceptions are beginning to swallow up the rule from a mandatory perspective of the three-tier system. In many states, it is a voluntary three-tier system. It has been stated the wholesalers are our partners to the extent that wineries can find wholesalers that will represent their products. It is a good way to get to market because our wholesalers do a good job for the wineries. The three-tier system is not always the best way for small wineries to get to market.

Senate Committee on Taxation
May 5, 2009
Page 12

LANCE W. HASTINGS (Director, State Government Affairs, MillerCoors):

I would echo the other supplier comments made previously. I have indicated to sponsors of the legislation that we oppose the bill to the extent that it contradicts our existing agreements with wholesalers in the State. One difference we have is that section 4, subsection 1, prevents us from prohibiting a wholesaler from selling an alcoholic beverage of any other supplier. It suggests we would not want to have the Budweiser franchise products in the MillerCoors houses for corporate competitive reasons. Our current agreement does have an amendment that identifies that particular area.

CHAIR COFFIN:

Do you know if tax evasion is going on in this business through a lack of reporting or sloppy reporting?

DINO DICIANNO (Executive Director, Department of Taxation):

To the best of my knowledge, I am not aware of any tax evasion. Because of the restrictions in the three-tier system and the reporting requirements from all that is affected, I do not believe there is.

CHAIR COFFIN:

Do you have sufficient auditors to check the wholesalers?

MR. DICIANNO:

It is important to understand that this is a self-reporting system, but we do desk audits on the returns and ensure the connection between the wholesaler, supplier, importer and retailer. We are involved in the gray market area with our audit investigators to stop contraband from coming into the State. We do not look at our role as trying to inhibit the ability of Budweiser, Coors or any other distiller to operate in this State. Our role is to ensure the excise is paid and there is not any gray market material in the State.

CHAIR COFFIN:

Do you feel a need to do site audits?

MR. DICIANNO:

We can do them, and we are already doing them.

CHAIR COFFIN:

I will close the hearing on A.B. 378 and open the hearing on Assembly Bill 492.

ASSEMBLY BILL 492 (1st Reprint): Imposes certain requirements on the enactment of legislation and the provision of notice regarding certain tax abatements and exemptions. (BDR 32-602)

ASSEMBLYWOMAN MARILYN K. KIRKPATRICK (Assembly District No.1):

On the ballot in the last election, we had a constitutional amendment approved in 2005 that said, if you are going to exempt property tax or sales and use tax in the future, there should be good public policy. Assembly Bill 492 does this. The first section references the constitutional amendment, and the second portion provides a mechanism to have accountability. This will provide the ability for us to see when abatements work and do not work. In ten years, we have to revisit these exemptions because as times change and the Legislature changes, what is important to us as a legislative body now is not as important ten years from now. This bill has a reporting mechanism whereby the Legislative Commission will be able to stay in touch with the abatements and exemptions used or not used. There is a piece that will help our fiscal staff as we look into the future. Another important piece is that local governments do not necessarily know about the exemption or abatements until coming to fruition. This allows the Commission on Economic Development to notify the political subdivisions 30 days in advance, so they have the ability to go before the public hearing to address the situation.

SENATOR WASHINGTON:

Section 2, subsection 1, paragraph (a) of the bill states, " ... achieve a bona fide social or economic purpose and the benefits of the exemption" Can you give an example of something that is bona fide?

ASSEMBLYWOMAN KIRKPATRICK:

There was concern that veterans, churches, girl scouts and boy scouts would not be allowed to get the exemptions, so we cleaned up the language.

SENATOR WASHINGTON:

Would the Department of Taxation certify that a particular organization has a bona fide social and economic purpose that benefits the exemption? Do you want to specify it in statute or through regulations?

ASSEMBLYWOMAN KIRKPATRICK:

We took out the word exemption in section 3 because the exemptions are already justified. We limited section 3 to the abatements because any

exemptions currently in place serve a large amount of people, so the abatements are tied to the sales and use tax which is the bigger piece.

SENATOR WASHINGTON:

Section 2 of the bill is a preamble and section 3 is dealing with the abatements, not so much the exemptions that are filed.

ASSEMBLYWOMAN KIRKPATRICK:

Correct. There are several thousand 501(c)(3) organizations. It is one thing when you are helping hundreds of people, but if you are helping one, it tends to be more applied through the abatement process. We do not enact special legislation for just one person. That is why we took out the word exemption.

SENATOR MCGINNESS:

I have received e-mails from my local governments that are looking at green energy bills offering 25-year abatements. School districts and the State are held harmless, so that leaves cities and counties in between. Would this bill help them?

ASSEMBLYWOMAN KIRKPATRICK:

This bill makes it a public process, and it notifies the cities faster. There are a lot of green energy abatements out there, and this bill will help track them.

SENATOR MCGINNESS:

A lot of cities and counties that I represent feel it is good if they can keep their doors open everyday, let alone trying to put testimony together to come and testify against a bill like this. Giving them notice to come testify does not help them when the money stops coming in. We need to be aware of that.

ASSEMBLYWOMAN KIRKPATRICK:

I agree with you. That is why I addressed it when all of the abatements were coming to them. That is what Clark County did on green building. They said we are going to give you \$100 million, and then you owe us three fire stations and improvements on industrial; they got \$700 million at the end.

CHAIR COFFIN:

Do you have any cross reference to the definitions of abatements and exemptions?

Senate Committee on Taxation
May 5, 2009
Page 15

ASSEMBLYWOMAN KIRKPATRICK:

Your fiscal analyst and the Department of Taxation could supply the information. I did not make reference to definitions because abatement is hard to define in order to include because it has to be very broad or very narrow.

CHAIR COFFIN:

Will this affect any legislation moving at the same time or in passage?

ASSEMBLYWOMAN KIRKPATRICK:

Legal Division will tell you any bill drafted with an exemption or abatement will have language that holds them harmless. All of the bills passed after July 1 will be included within this bill.

CHAIR COFFIN:

What happens if they become effective on the same day?

ASSEMBLYWOMAN KIRKPATRICK:

Some are effective upon passage and some effective in July and October, but Legal tells me that because the voters have already approved it, it has to be part of the discussion.

SENATOR WASHINGTON:

In section 3 of the bill, the expiration dates are ten years. What if the Commission on Economic Development finds there is a project worth extending the expiration date? Is there a process by which a company could appeal and ask for an extension?

ASSEMBLYWOMAN KIRKPATRICK:

There is not. If it is STAR Bonds, renewable energy or green buildings and they have their financing in place, they have a vested right not to be affected by the sunset date.

SENATOR WASHINGTON:

You mentioned that would also affect any project under STAR Bonds?

ASSEMBLYWOMAN KIRKPATRICK:

I am just using that as an example.

Senate Committee on Taxation
May 5, 2009
Page 16

SENATOR WASHINGTON:

If you have a project that is started or breaking ground and waiting for financing, if the statute of limitation expires, you can continue under the same abatement, or STAR Bonds or economic development.

ASSEMBLYWOMAN KIRKPATRICK:

Once your financing is in place, your abatement can continue.

SENATOR WASHINGTON:

Once ten-years is set for that abatement, then future Legislators can determine whether it is still applicable.

ASSEMBLYWOMAN KIRKPATRICK:

That is correct.

CAROL E. VILARDO (President, Nevada Taxpayers Association):

We support A.B. 492. A concern in looking at local government finances and expenditures was that the Legislature had approved a number of exemptions and abatements for which there was no input, no determination of this bona fide process. There were no finite details as to when the exemptions or abatements would be reviewed. When the subcommittee recommended to the legislative committee that a bill be requested, Legal advised the committee that doing a statutory bill would not give the type of effect because if it was statute, the Legislature would have the ability to ignore the directive. Much like the unfunded mandate in statute, you frequently see a provision that says the provisions of Nevada Revised Statute 354.599 do not apply. It is the Legislature not paying attention to their own directive.

The committee said we want a constitutional amendment which is what you have in section 1 of A.B. 492 that the voters approved. This will require the Legislature, when they get a request for an exemption, to make a predetermination and set a sunset date. With the changes made to the bill, we support it.

SENATOR WASHINGTON:

This puts more teeth in the process than doing it by the NRS.

MS. VILARDO:

Yes. If it was done as a statutory provision, the Legislature can ignore it because one Legislature does not bind another one with a directive. The people on the advisory committee and the Legislators wanted more accountability before an exemption was passed by the Legislature, knowing the Legislature was not going to impair bonding, there was a good social purpose and a review date, whether it was 5, 10 or 15 years. That would be a legislative determination.

MICHAEL E. SKAGGS (Executive Director, Commission on Economic Development):
The sponsor came to us early in the process with concerns, so we were able to work with her and the counties on the language. One of the better changes for us all is the 30-day notice prior to consideration. We consider each of these projects for incentive. For 14 years, we have never overridden any county's objection.

WES HENDERSON (Nevada Association of Counties):

We are supportive of the bill, especially the accountability in the reporting requirements. We would like to see more definition on the notification and hearing process.

MR. DICIANNO:

The Department of Taxation is neutral with respect to the bill. We had no problem compiling those reports under the new language in the bill. We already conduct performance audits on these abatements. If we have an issue, we take it to the Commission on Economic Development and to the Nevada Tax Commission. In section 3, subsection 1, paragraph (b), the abatement does not apply to any taxes imposed pursuant to NRS 374.110 or NRS 374.190. That has to do with sales tax. Prior abatements did apply to the Local School Support Tax portion of the sales tax. This bill would disallow that going forward starting July 1. We supplied a fiscal note of about \$50,000 on that portion of the bill. There is a minor cost change to our system that staff has.

Senate Committee on Taxation
May 5, 2009
Page 18

CHAIR COFFIN:

I will close the hearing on A.B. 492, and the Senate Committee on Taxation is adjourned at 3:47 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Bob Coffin, Chair

DATE: _____