

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

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

The Senate Committee on Taxation was called to order by Chair Bob Coffin at 1:38 p.m. on Thursday, May 7, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator 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

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20

STAFF MEMBERS PRESENT:

Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Dawn Lietz, Supervising Auditor, Audit Section, Motor Carrier Division,
Department of Motor Vehicles
John P. Sande III, Western States Petroleum Association
Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association
Paul Enos, CEO, Nevada Motor Transportation Association
Dave Dawley, Assessor, Carson City
Michele W. Shafe, Assistant Director of Assessment Services, Clark County
Josh Wilson, Assessor, Washoe County
Jeff Payson, Appraisal Manager, Clark County Assessor's Office

Senate Committee on Taxation
May 7, 2009
Page 2

Dino DiCianno, Executive Director, Department of Taxation
Carole Vilardo, President, Nevada Taxpayers Association
Russell M. Rowe, Wynn Resorts, Limited
Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority
Joe Guild, Southern Nevada Water Authority
Anne Loring, Washoe County School District

CHAIR COFFIN:

I will open the hearing on Assembly Bill (A.B.) 235.

ASSEMBLY BILL 235 (1st Reprint): Makes various changes to provisions governing the taxation of certain fuels and special fuels. (BDR 32-897)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

Assembly Bill 235 includes ethanol and methanol within the definition of a motor vehicle fuel which requires ethanol to be taxed in the same manner and at the same rate as gasoline. Dealers, suppliers, exporters and transporters of ethanol and methanol are subject to the same requirements and penalties applicable to dealers, suppliers, exporters and transporters of gasoline, including the requirements concerning licensing, bonding, recordkeeping and collection of taxes. The bill also provides for the taxation of biodiesel, biodiesel blends and a petroleum-based product such as special fuels. In addition, the Department of Motor Vehicles (DMV) is authorized to take administrative action against a person licensed to sell certain motor vehicle fuels or special fuels or a person who acts as a motor vehicle fuel or special fuel supplier without a license. The measure exempts a special fuel manufacturer from regulation as a special fuel supplier. A person must obtain a license from the DMV to operate as a special fuel manufacturer. Special fuel manufacturers are required to file tax returns with the DMV in the same manner as a special fuel dealer. If delinquent in the payment of special fuel taxes, he must execute a bond payable to the State in the amount of no less than \$2,500. The bill requires a motor carrier with a declared gross vehicle weight in excess of 26,000 pounds to obtain a temporary permit for special fuels before entering the State.

CHAIR COFFIN:

Why do you bring the bill?

ASSEMBLYMAN HARDY:

There are people bringing ethanol into the State by railcar, and in this process, you can bypass the mechanism of charging certain fuel taxes. This does not expand the taxes but captures the tax that should have been imposed. One issue in bringing alcohol into the State through a railcar is we do not know what is downloaded from the railcar to a truck. It then is taken to a service station and unloaded into the tank which gives an ethanol mix more than the E10 most cars are able to process. There should be a penalty for ruining someone's car.

DAWN LIETZ (Supervising Auditor, Audit Section, Motor Carrier Division, Department of Motor Vehicles):

I have prepared testimony ([Exhibit C](#)) and ([Exhibit D](#), original is on file in the Research Library).

CHAIR COFFIN:

You have not given the names of the people importing and the names of the people who owned the businesses.

MS. LIETZ:

I will give you that information now.

CHAIR COFFIN:

Yes, we want it on the record.

MS. LIETZ:

For the record, one of the companies that was involved in this process was—they're called Brad Hall and Associates, and it's a company that has been involved in supposed or alleged fuel tax evasion in several other of the western states. It's a company that we want monitored really closely on our task force meetings. And they were actually getting the fuel from another company called E85 of Nevada, and that company has since gone defunct. They have surrendered their license after the fuel prices dropped back down. The rail spur where this fuel was located was a company in Las Vegas called Pan Western. And we don't believe that Pan Western was directly involved with the process, but they were providing the location for the railcars to be stored.

CHAIR COFFIN:

In the preprinted material, [Exhibit C](#), I do not see the full story on this thievery, and we need to know where you are in the investigation. Do you have law enforcement involved, and what is the progress?

MS. LIETZ:

The problem that we have is the State Department of Agriculture goes out and tests the fuel, but it turns over so quickly that it is difficult to catch them in the act. That is why Assemblyman Hardy asked us to put something in the bill that would allow us to go back after the fact and put administrative fines on them. The administrative fines section in A.B. 235 gives us something to go after the people blending the fuel illegally. The only evidence we have is that it did not make it to the tax returns. We completed audits on Brad Hall for fiscal year 2004-2005 and just received a payment for \$500,000.

CHAIR COFFIN:

What about the gasoline retailers that were purchasing the bootleg fuel?

MS. LIETZ:

They are unaware of it; this particular station was owned by the same person who owns E85 of Nevada. When they own the transport, the retail station and the company that is reporting to the State, it is easy to hide it.

CHAIR COFFIN:

Have we looked at the price they were paying to this wholesaler?

MS. LIETZ:

There were several consumer complaints that the price was running 15 cents to 20 cents a gallon less than the neighboring stations. The bulk of the ethanol was going through when the prices were high in 2008. We received an e-mail from Pan Western just last week asking us to suspend their license for terminal reporting which states how much fuel was being stored on their property. They told us to cancel their license because ethanol is now not cost-effective in the State.

CHAIR COFFIN:

Which law enforcement agency can be involved?

Senate Committee on Taxation
May 7, 2009
Page 5

MS. LIETZ:

We discussed it with the Nevada Highway Patrol.

CHAIR COFFIN:

An investigation cannot be launched when you have suspicion?

MS. LIETZ:

I am not aware of whether we had sufficient evidence.

CHAIR COFFIN:

Would that be up to the prosecutors?

MS. LIETZ:

Yes.

SENATOR CARE:

Section 1.7 says it may "take disciplinary action in accordance with subsection 2 against any person" Do you mean a natural person or business or an employee of a business?

MS. LIETZ:

That is the standard verbiage we use because there are some sole properties and corporations, but it is intended to be the business itself.

SENATOR CARE:

Section 1.9 says "motor vehicle fuel which substantially exceeds" Is there any language in statute that has this already?

MS. LIETZ:

I am not aware of any. We put in "substantially exceeds" because the U.S. Environmental Protection Agency standards may change, and we wanted the ability through regulation to adjust that as the standards change.

SENATOR CARE:

Section 1.9, subsection 1 reads "If the Department determines through an audit that a retailer has sold" Do you mean just has sold as opposed to intentionally sold?

MS. LIETZ:

This is not intended to go back on the retailer. This section of the law would allow us to go to the person who supplied that retailer with the fuel.

SENATOR CARE:

The amount of the fines—how did you decide on the amount?

MS. LIETZ:

In our progressive sanctioning, we have the ability to assess up to \$1,000. Because fuel tax due on a tank load of fuel amounts to about \$3,200, we use what we have in place and fine them \$1,000 per occurrence which allows us to recover anything sold illegally to the retail station.

SENATOR CARE:

It is not dollar for dollar but captures the lost revenue or an equivalent fine, equivalent more or less.

MS. LIETZ:

Correct. We would still collect the tax through the normal mechanism. This would be an administrative fine above any tax due.

CHAIR COFFIN:

The pipeline has been here since 1964, so why do we not have anything in the statutes already?

MS. LIETZ:

We have a 25-percent penalty but nothing beyond that. We have to prove the intent, so if we have notified them, we have stronger grounds for showing intent than just conducting an audit.

CHAIR COFFIN:

I do not believe a retailer is ignorant of where they are buying their fuel.

SENATOR MCGINNESS:

Last time I bought gasoline, the sticker on the pump stated it may contain 10-percent ethanol. Is that as scientific as it gets?

MS. LIETZ:

The legitimate suppliers are blending it properly. They pull their fuel at the terminal, which is controlled, on the same bill of lading and deliver to the retail station premixed. The Internal Revenue Service requires the fuel is blended before it goes into the tank. We found these companies were lifting pure ethanol from the railcars at Pan Western and dumping it into retail stations.

JOHN P. SANDE III (Western States Petroleum Association):

We worked with DMV and Assemblyman Hardy and are supportive of the bill.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Store Association):

The bill from DMV and Assemblyman Hardy is important because it upsets legal commerce. Retailers know when you buy fuel cheaper than others buy it that something is wrong.

SENATOR CARE:

The advertising we see offers the cheapest gas in town. Could these stations be involved?

MR. KRUEGER:

In most cases, they are legitimate because they are choosing to take less profit. That is the case DMV was referring to in Las Vegas. There was a difference at these stations offering their product during the time when gasoline was at \$4-plus. They were lowballing the price because they were not paying the taxes due.

PAUL ENOS (CEO, Nevada Motor Transport Association):

We also support A.B. 235 because greater regulation on this commodity will ensure we have less bad fuel which will protect our trucks from damage.

SENATOR SCHNEIDER:

I was approached in the Senate Energy Committee about a place in North Las Vegas that manufactures biodiesel, and they were looking at having an amendment on one of our bills. Since we have no germane bills, our Legal Counsel informed me A.B. 235 was the only bill available. I have asked that an amendment be put together, I wanted to inform you and Assemblyman Hardy that I may bring an amendment on this bill.

CHAIR COFFIN:

Assemblyman Hardy, you have a two-thirds requirement on this bill, so amendments may be requested.

SENATOR MCGINNESS:

Ms. Lietz testified that this is not a new tax. Assemblyman Hardy, do you believe it needs a two-thirds? Is it a new tax on the bad guys?

ASSEMBLYMAN HARDY:

This tax should be there all the time; the certified retail suppliers are already paying the tax. This captures those who are not paying taxes, so technically this is not a new tax. As to the two-thirds, I will let your Legal Counsel make that determination, but I would like more of a unanimous vote.

SENATOR MCGINNESS:

Did you try to remove the two-thirds?

ASSEMBLYMAN HARDY:

No, we did not.

SENATOR CARE:

The test on the two-thirds is if it means additional revenue for the State, it is not a tax or fee.

CHAIR COFFIN:

I will close the hearing on A.B. 235 and open the hearing on Assembly Bill 205.

[ASSEMBLY BILL 205 \(1st Reprint\)](#): Makes various changes relating to the administration of property taxes. (BDR 32-703)

DAVE DAWLEY (Assessor, Carson City):

There are many sections in the bill with the added amendments. We are trying to address one of sections wherein when a property is destroyed by a natural disaster, there is no decrease in the amount of taxes paid because of the property tax cap. The assessed property evaluation may be at one point, but you are paying taxes on a lower value. If the home burns down or is destroyed by a natural disaster, no provision keeps the cap on the land. The law states that the tax cannot exceed more than 3 percent than the year before. Our bill is to give relief to people building new houses so their taxes are not twice as

much as before. We also have issues where a golf course remains unused for a one-year time period. When we go to collect the deferred taxes, the seven-year deferred taxes are then based on a golf course valuation, not on what the property is zoning.

The Department of Taxation added an amendment clarifying information they are requesting from our department. One of the most contentious sections is the assessor's technology fund. We are asking for an additional two years for our technology fund. Because property values have changed so rapidly, most of the assessors have changed to annual recosting or annual reappraisal of the property. Not all of the assessors are able to make this switch. It is becoming more difficult to create reports on districts, and we are being asked to supply more, so we need funds to create software to get these reports done.

MICHELE W. SHAFE (Assistant Director of Assessment Services, Clark County):

The Department of Taxation would like the assessors to project assessed valuation for upcoming years that the Department of Taxation currently completes. This would require a technology change and possible upgrades in our systems to better the reporting.

We are trying to save time and work smarter. When we receive plans from a hotel/casino, instead of having an appraiser spend months redrawing the whole set of plans, we intend to accept them, verify them and ensure these are the final representation. The next area is with delinquent personal property taxes. Under the current system, if the cost is \$25 or less, we have to wait three years before we can write it off. If something is delinquent for three years or under \$25, we could take it off our books sooner. Finally, we have personal property taxpayers who do not pay their taxes; there is nothing in the law to prevent them from taking their property and moving it elsewhere. This would create a gross misdemeanor for anyone who were to do this.

JOSH WILSON (Assessor, Washoe County):

Mr. Dawley and Ms. Shafe have covered everything. I am available for questions.

SENATOR CARE:

Are you okay with the amendments?

MR. DAWLEY:

We have important issues in our bill. We are willing to do whatever it takes for our bill to pass.

SENATOR CARE:

Would you like your bill in its original form? In section 14, was the notice of seizure leading to a gross misdemeanor in your original bill? How did you come up with gross misdemeanor as opposed to a misdemeanor?

MS. SHAFE:

We wanted it to have impact.

SENATOR CARE:

You want it to be a crime.

MS. SHAFE:

Yes.

SENATOR CARE:

In section 8, what would the unfunded mandate cost Clark County?

MS. SHAFE:

That would not have any fiscal impact because we are asking to file the segregation report in August instead of July which would make it more accurate.

SENATOR CARE:

The front of the bill contains an unfunded mandate in section 8 not requested by affected local government.

MS. SHAFE:

We are not aware of any unfunded mandates in the bill, and section 8 would cause us no problems.

CHAIR COFFIN:

We will have Joe Reel research this bill. What is happening on property valuations where people have had their view ruined or devalued by an adjacent high-rise?

MS. SHAFE:

We would look at the market. When the high-rise goes up in front of the other high-rise or the parking garage goes up, it will affect the sale price and there would be an appropriate reduction.

CHAIR COFFIN:

Can anyone represent to us what Clark County Assessor Mark Schofield is thinking on this subject?

MS. SHAFE:

I represent him at this meeting.

CHAIR COFFIN:

What have you been doing? You have requests for changing valuations?

MS. SHAFE:

We had almost 6,000 requests.

CHAIR COFFIN:

Generally, those are valuation changes based on market value?

MS. SHAFE:

Correct.

CHAIR COFFIN:

What about the circumstances that I am discussing?

MS. SHAFE:

If someone had a view and they lose it because of construction, the value would be less and we would see that in the market.

CHAIR COFFIN:

You should have the authority to make value judgments based upon these situations. When you have a relatively new unit, how are you going to base it on sales when people are not selling?

JEFF PAYSON (Appraisal Manager, Clark County Assessor's Office):

Each year we do a reevaluation. When we complete the reevaluation on these properties, we will look at the sales and determine the market value. In this

market with everything going down—but specific to removal of a characteristic such as a view—we will make adjustments to that property if the market indicates no effect on the value. The taxpayer can appeal the valuation of the property based on those characteristics, and the authority to make the change in value is up to the County or State Board of Equalization.

DINO DICIANNO (Executive Director, Department of Taxation):

We are in support of A.B. 205. The amendments were part of sections 8 and 1 of the bill. Our intent was not to turn the bill into a Christmas tree. We did consult with the assessors, and they did agree with the amendments to both sections. I want to clarify a statement made with respect to projections. The language was already in statute; we were amending the ability to get additional information from the assessors to be more current. Given the current circumstances, more up-to-date information will enable our projections to be accurate. When the amendment was put in on the Assembly side, it went forward with a technical error I would like to correct in this House. In section 8, subsection 2—which amends NRS 361.390—reads:

Prepare and file with the Department on or before January 31, March 5 and October 31 of each year, a segregation report showing the assessed values for each taxing entity within the county on a form prescribed by the Department. The assessor shall make any projections required for the current fiscal year

This is where the change needs to occur by removing the words “any” and “required.” The sentence should read, “The assessor shall make projections of assessed values for the current fiscal year and the upcoming fiscal year regarding real and personal property for which the taxable value is determined by the assessor.”

At the time we filed the amendment on the Assembly side, we did not realize that NRS 361.390—referenced in section 1, subsection 4, paragraph (a), subparagraph (1), sub-sub paragraph (II)—was also a connector statute to another statute which is NRS 360.690 in section 1 of the bill. That requires the Department to conduct projections with respect to Consolidated Tax Distribution, which has nothing to do with property tax. This is about sales tax and the other revenues we collect. Deleting the term “by the Department” from sub-subparagraph (II) would remove the requirement for the Department to do that projection. That is not what we want. The language in section 1 that is being deleted needs to be added back. What needs to be taken out, pursuant to

NRS 361.390, wherever that reference is in section 1 needs to be removed and "by the Department" needs to be added back.

CHAIR COFFIN:

In section 8, did you mean the assessor shall make projections?

MR. DICIANNO:

That is correct. The only wording change as I noted in section 8, subsection 2 is the removal of the words "any" and "required," and it should read as follows, "The assessor shall make projections on assessed values for the current fiscal year and the upcoming fiscal year regarding real and personal property for which the taxable value is determined by the assessor."

CHAIR COFFIN:

What it is saying and what you are saying are different. Are we looking at the wrong reprint of the bill? Do both sentences need to be changed or just the one?

MR. DICIANNO:

Just that one.

CAROLE VILARDO (President, Nevada Taxpayers Association):

We are in support of A.B. 205. I would like to point out a couple of sections. First, a provision in the bill allows the assessor to make a determination of reducing value if a property is destroyed. The assessor will have the latitude to make those adjustments. Second is a definite clarification on the dates of when you appeal your personal property and real property. The language was not as clear as it should have been, and there are different appeal dates for both of those. The third item is very important: the extension of two years on the technology fund in sections 22 and 23 of the bill.

RUSSELL M. ROWE (Wynn Resorts, Limited):

I wanted to address Senator Care's comments and questions about the golf course language. It is public knowledge that Wynn Resorts intend to develop their golf course in the future. Last year, we approached the Assessor's Office to determine the recapture value for the seven-year payment required when redeveloping a golf course because of the open-space assessment adopted by the Legislature in 2005. The question was: how do you calculate the recapture? There is computation on agricultural land for that recapture under the existing

statutes. But when the golf course legislation in 2005 was adopted, a computation was not put in for recapture on the golf courses. We worked with the Clark County Assessor's Office. We developed language vetted through the Nevada Assessors Association that was put into the original bill and was not an amendment later on.

ANDY BELANGER (Senior Management Analyst, Southern Nevada Water Authority):

We are here to offer an amendment to A.B. 205 ([Exhibit E](#)). We received an inquiry from the Clark County Assessor's Office in March concerning property that was agricultural property on the Virgin and Muddy Rivers. They have taken advantage of our lease program by leasing water on the Virgin and Muddy Rivers that was pre-1929. That water is supplemental to the waters of the Colorado River and provides a benefit to the residents of southern Nevada. The inquiry from the Assessor's Office made us think about the impacts on those farmers who have leased those water rights temporarily to the Water Authority. We want to make sure we had an amendment that said, if you lease water to a political subdivision in the State of Nevada for a municipal purpose and the property previously qualified for the agricultural exemption and has not been converted to a higher use, it should retain the agricultural exemption until converted to some other use. This bill does not provide any benefit to the Southern Nevada Water Authority, but it does benefit and maintain the tax status of those people who lease water to us.

SENATOR CARE:

How long do these leases run?

MR. BELANGER:

The leases run three years, and they can be renewed.

SENATOR CARE:

How many are there?

MR. BELANGER:

I can get you that number.

SENATOR CARE:

Is it a large number?

Senate Committee on Taxation
May 7, 2009
Page 15

MR. BELANGER:
It is around 50 to 100 leases.

SENATOR CARE:
Did you have this discussion with them and say you would provide an amendment?

MR. BELANGER:
We have had discussion with the Assessor's Office and some of the people who have leased us the water. We are concerned that if the status changes, there will be a negative impact on them.

SENATOR CARE:
Would this Committee recognize any of the names on the leases?

MR. BELANGER:
I do not believe so. They are shareholders of the Muddy Valley Irrigation Company, the Bunkerville Irrigation Company or the Mesquite Irrigation Company.

CHAIR COFFIN:
You will provide the list of the shareholders to the Committee.

SENATOR MCGINNESS:
Does this have anything to do with ranches in eastern Nevada? This is leased property.

MR. BELANGER:
That is correct.

SENATOR MCGINNESS:
Are there any ranches in eastern Nevada or is this all Muddy River-Virgin River water?

MR. BELANGER:
This would only be Muddy and Virgin River water; it would not apply to those properties in eastern Nevada and any groundwater. It is specific to surface water.

Senate Committee on Taxation
May 7, 2009
Page 16

CHAIR COFFIN:

Are there any counties with rivers running through them?

MR. BELANGER:

I am not aware of any other situation to which this would apply.

JOE GUILD (Southern Nevada Water Authority):

I am just the wingman for the record.

ANNE LORING (Washoe County School District):

The school districts have concerns with sections 22, 23 and 24 of the bill. It is the extension of the sunset on the additional 2 percent collected from the net proceeds of mines and personal property taxes to go into the technology fund. This fund was established in 2005 with a 2 percent to sunset in 2007. That was extended to 2009. This bill will extend the sunset to 2011. From the Washoe County School District's portion, this has generated about \$572,000 toward technology for the assessors. We hope this will be the last extension.

Senate Committee on Taxation
May 7, 2009
Page 17

CHAIR COFFIN:

The hearing on A.B. 205 is closed and the Senate Committee on Taxation is adjourned at 2:43 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Bob Coffin, Chair

DATE: _____