

**MINUTES OF THE  
SENATE COMMITTEE ON TAXATION**

**Seventy-fifth Session  
February 17, 2009**

The Senate Committee on Taxation was called to order by Chair Bob Coffin at 1:41 p.m. on Tuesday, February 17, 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

**STAFF MEMBERS PRESENT:**

Russell J. Guindon, Senior Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Mike Wiley, Committee Secretary

**OTHERS PRESENT:**

Robert F. Bony, Senior Deputy Attorney General, Office of the Attorney General  
Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association;  
Cigar Association of America  
Samuel P. McMullen, Altria Group  
Alfredo Alonso, R.J. Reynolds Tobacco Company  
Jerrie C. Tipton, Board of Commissioners, Mineral County  
Dorothy Fowler, Assessor, Mineral County  
Terry E. Rubald, Chief, Division of Assessment Standards, Department of  
Taxation  
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
Bjorn Selinder, Churchill County

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CHAIR COFFIN:

I ask for a motion to adopt the Standing Rules ([Exhibit C](#)).

SENATOR MCGINNESS MOVED TO ADOPT STANDING RULES OF  
THE SENATE TAXATION COMMITTEE.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR COFFIN:

I will open the hearing on Senate Bill (S.B.) 48.

**SENATE BILL 48**: Repeals certain requirements regarding the delivery of  
cigarettes sold to consumers. (BDR 32-270)

ROBERT BONY (Senior Deputy Attorney General, Office of the Attorney General):  
I am here to provide testimony and support of S.B. 48 as it appears before the  
commission. The bill revises certain provisions regarding the delivery of tobacco  
products contained in Nevada Revised Statute (NRS) 370 to comply with the  
recent United States Supreme Court decision of *Rowe v. New Hampshire Motor  
Transportation Association*, 128 S. Ct. 989 (2008), as shown in the Attorney  
General's letter ([Exhibit D](#)).

By way of background, NRS 370 imposes certain requirements on the delivery  
of tobacco products sold to consumers in our State. Currently, if a tobacco  
retailer utilizes a delivery service to deliver its products to Nevada consumers,  
existing law requires the delivery service to obtain a signature from the  
purchaser and obtain proof, in the form of valid photo government ID, that the  
person accepting delivery of the tobacco product is at least 18 years old.

The State of Maine had similar statutory requirements. In *Rowe*, the U.S.  
Supreme Court addressed the issue of whether a federal statute that prohibits a  
state from enacting any law related to a motor carrier's price, route or service  
would preempt the provisions of a Maine tobacco law that regulated the  
delivery of tobacco products to Maine consumers.

Specifically, the U.S. Supreme Court analyzed whether a Maine statute that required a delivery service to obtain proof, in the form of a valid photo government ID, that a person accepting delivery of the tobacco product was aged 18 conflicted with a federal statute that prohibited a state from enacting any law regulating a motor carrier's service. In this instance, the Court determined that Maine's recipient age verification statute had a connection with or a reference to a common carriers rates, routes or service because Maine's recipient age verification statute required the motor carriers to offer tobacco delivery services that differed significantly from those that the market might dictate. The court determined that Maine's recipient age verification statutes were preempted by federal law.

Nevada has the same recipient age verification statutes that the Supreme Court determined were preempted in the *Rowe* decision. As such, to bring our statutes into compliance with the *Rowe* decision, the statutory sections contained in S.B 48 should be modified, repealed and amended.

CHAIR COFFIN:

Does this change the original bill or add to the amendments?

MR. BONY:

There are additions. It does not change the contents of the original bill.

CHAIR COFFIN:

I want to get past the substance of this original bill. Every time Congress passes a bill, they throw in a clause saying the federal law will preempt all the statutes in the states. Did I say this correctly?

MR. BONY:

You did say it correctly. The public health argument was raised in the *Rowe* case and the U.S. Supreme Court said there was not a public health exception, based on federal trucking laws, which stems from this bill.

CHAIR COFFIN:

What happens if we did this on the delivery of wines? We have had a lot of discussion and dissent from carriers. Are we to face more of the same?

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MR. BONY:

I honestly cannot answer the question. I am simply here to talk about the delivery of tobacco products.

SENATOR SCHNEIDER:

Congress has a process where Internet sales are not taxable. It is killing Main Street. Maybe we need to draft a letter to U.S. Senator Harry Reid and U.S. Senator John Ensign and let them know we need to back off this program.

SENATOR COFFIN:

We should consider drafting a resolution to Congress during this Session that would give the states the authority to deal with this subject.

MR. BONY:

The amendment ([Exhibit E](#)) attempts to bring the sales of other tobacco products behind the counter or out of vending machines, so they cannot be accessed by individuals aged 18 or under in our State. This amendment does the same thing to other tobacco products that we are currently doing with cigarettes. In an exclusion in the amendment to the NRS 202.2485, subsection 3 has been added. The Legislative Counsel Bureau will review these amendments, as they are a starting point. We think they are good public policy and would fit well in S.B. 48.

CHAIR COFFIN:

Would you read the content of the paragraph that we need to insert.

MR. BONY:

Subsection 7, page 2 of the amendment, [Exhibit E](#), says, "It is unlawful for any retailer to sell cigarettes, cigarette paper, tobacco of any description or products made from tobacco through the use of any type of display." It would require the individual attempting to purchase to have a retailer present in order to complete the purchase. On page 1, subsection 2 of NRS 202.2493 has language used throughout the rest of the bill.

SENATOR CARLTON:

Are you talking about outlawing cigarette vending machines?

Mr. Bony:

No.

SENATOR CARLTON:  
What are we really trying to do?

MR. BONY:  
We are trying, to ensure other tobacco products are not on self-service displays. It is my understanding they are not. If an individual aged 16 or 17 goes into a store and attempts to buy other tobacco products such as Skoal, they need a live body to complete the transaction. This ensures that would occur.

SENATOR CARLTON:  
When I hear self-service display, I think vending machine. So I am a bit confused as how that could be interpreted.

MR. BONY:  
Subsection 7, contained in the language, says "except a vending machine used in compliance with NRS 202.2494." This means vending machines that contain cigarettes can only be located in places like bars or where you need to be 21 years old to have access.

SENATOR CARLTON:  
Is this to eliminate the free disbursements of cigarettes at county fairs, rodeos, NASCAR or any of those types of events?

MR. BONY:  
Those events do have age requirements. They refer to them as adult-only facilities.

CHAIR COFFIN:  
Why do we need to do this? Would this help in reducing smoking?

MR. BONY:  
Anytime you can strengthen the laws regarding the access to tobacco products to underage individuals, it is a step in the right direction. We are trying to ensure good public policy with these amendments.

CHAIR COFFIN:  
This includes cigarette paper or paper that could be used for any number of purposes, including cigarettes.

MR. BONY:

That language really just mirrors what is currently contained in subsection 2 of the existing statute. We were trying to be consistent in our suggestions.

CHAIR COFFIN:

Does the Master Settlement Agreement between the states have anything to do with this?

MR. BONY:

There may be some provisions contained in the smokeless tobacco Master Settlement Agreement. This is more from my perspective, more of a good issue on public policy. Anything we can do to help the Master Settlement Agreement is a good thing.

SENATOR CARE:

If the Legislature were to do nothing, the U.S. Supreme Court case is the law of the land. Would your office enforce existing law as you understood it to be in light of that U.S. Supreme Court decision?

MR. BONY:

That is a good policy question. I am hard pressed to think we would make an effort to enforce laws that we know are not constitutional. What is important to the State is that we try make sure the laws we have on our books are not only compliant with Nevada law but federal law as well.

SENATOR CARE:

When we get a U.S. Supreme Court decision, we amend the statute to be consistent with that decision; the fact is, if we did nothing, the U.S. Supreme Court case is still the law of the land.

MR. BONY:

That is correct.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Store Association; Cigar Association of America):

I am here to support the original bill and its language to make Nevada law comply with federal law. However, I am concerned about this amendment as being an overreach by the Attorney General's Office. We have had an active program, conducted by the Attorney General's Office, to visit retailers on a

frequent basis and with underage decoys who attempt to buy tobacco products. In the amendment, subsection 7, I am concerned about the term "any type of display" because behind the counter, it is still a display. Access described in paragraphs (a) and (b) of the amendment. I would like to work with the Attorney General's Office and others to see if we can craft something that make more sense. I am opposed this amendment.

SAMUEL P. McMULLEN (Altria Group):

Altria is the parent company of Philip Morris, USA and U.S. Smokeless Tobacco Company. We support this bill as it was originally proposed. We have worked with the Attorney General over the years to help implement the Master Settlement Agreement. The presentation of all tobacco products ahead of the counter, they call it self-service, is something that is not preferred by the Master Settlement Agreement. The Settlement wanted all tobacco products to be in a place where they could only be purchased through the staff of the store. To be consistent with other tobacco products, Altria is supportive of moving these tobacco products behind the counter. The major point is about youth access prevention. As for the existing language of the statute, we are trying to have internal consistency. Subsection 3 says "cigarette paper, tobacco of any description or products made from tobacco," which is the language that was added into section 7 in the amendment the Attorney General sponsored. It was designed to stop a display where the product could be reached without assistance.

CHAIR COFFIN:

Is the advertising being construed to be a sale?

MR. McMULLEN:

It would not change anything. We have a track record with enforcement and compliance as it relates to cigarettes. That has not stopped point-of-sale advertising other than restrictions through the Master Settlement Agreement. This only affects product displays and placement of product in retail stores and their access without having some assistance by staff of the store.

ALFREDO ALONSO (R.J. Reynolds Tobacco Company):

We support the bill but do not support the amendment. This seems to be a competitive issue; it is a way of pushing the lesser brands out of the forefront, away from the customer. There is already an effective law on the books. This is

an attempt to move as much of this product behind the counter. It is a shelf-space issue.

CHAIR COFFIN:

I will close the hearing on S.B. 48 with no action taken. I will now open the hearing on Senate Concurrent Resolution (S.C.R.) 1.

**SENATE CONCURRENT RESOLUTION 1**: Directs the Nevada Tax Commission to conduct a study concerning the proper determination of property capitalization rates for certain taxpayers. (BDR R-549)

JERRIE C. TIPTON (Board of Commissioners, Mineral County):

We are asking for an interim study on the cap rate on possessory use tax for the major contractor at the Hawthorne Army Depot. We have had problems between Mineral County and the military base for 15 years. We are asking for guidance on this issue.

CHAIR COFFIN:

Tell us what the bill does.

MS. TIPTON:

The history on this conflict: In the past, Mineral County forgave back taxes to the military base, the County Commissioners forgave future taxes and the County Assessor went to the Nevada Supreme Court saying you cannot do that. The Court ruled in the Assessor's favor. Every time the base receives a tax bill for possessory use, base officials go to the State Board of Equalization which sets a rate favoring the military base. When 90 percent of the County's taxable property is on the military base, it creates issues. Two years ago, the County Commissioners budgeted \$250,000 for the base's use of the property, and we received \$156,000. Last year, we asked the County Assessor for guidance on the budget and was told to plan \$40,000. We received \$448,000. We are asking for a cap rate that is fair to Mineral County and the contractor. We are forced to use resources that we do not have available. The tax bill is sent out, we receive the payment and then distribute the taxes. Two months later, we are forced to withdraw funding because we did not receive the money that was communicated to us.



DOROTHY FOWLER (Assessor, Mineral County):

I work with the base contractor to determine my cap rate. Then, because the base does not approve of the tax bill, the State Board of Equalization upholds their 12-percent to 14-percent cap rate. We need more guidance.

SENATOR CARE:

Does the Payment in Lieu of Tax (PILT) money figure into this issue?

MS. TIPTON:

It does not. This year, Mineral County has full PILT funding, and we will have it through 2012. Last year, we received \$460,000. The PILT payment is on the land excluding the military base and the Indian reservation.

CHAIR COFFIN:

Why did you bring your proposal before this Committee?

MS. TIPTON:

The former Mineral County Assessor informed me that Mineral County only has one bill draft request, and this is the place to start.

CHAIR COFFIN:

Why did you direct this to the Nevada Tax Commission and not the Legislature?

MS. FOWLER:

I am the Mineral County member for the Nevada Association of Counties (NACO). When I brought this to NACO Executive Director Jeff Fontaine, he directed me to use this approach.

SENATOR TOWNSEND:

If the Tax Commission is the right venue, the Committee will work through that. Then we have to establish how narrow that would be to accommodate your challenge and the cost associated with that. The Chair's point is we have to fund this and find the right venue.

MS. TIPTON:

We just need guidance on how to solve the Mineral County issue.

TERRY E. RUBALD (Chief, Division of Assessment Standards, Department of Taxation):

The resolution says it concerns business activities on any exempt federal property. There are many different kinds of businesses, from the demilitarization depot in Hawthorne to warehouses to ski resorts. If the Committee desires to make it more limited in scope, we have NRS 360.215, subparagraph 8, in which an assessor may request assistance in a specific appraisal. In this case, it concerns a single taxpayer. This might be considered.

SENATOR CARE:

How would Mineral County avail itself of this statute or a related statute?

MS. RUBALD:

The requirements of this Resolution are more extensive, but it could be done. It does involve more than one industry.

SENATOR CARE:

Do you have the resources to conduct this study?

MS. RUBALD:

We have people who are skilled in the development of cap rates. The development of the cap rate is only one portion of the income approach to value. Other things that go into the income approach include the need to capitalize the appropriate income stream to arrive at a value. There are assumptions in the development of cap rates, assumptions in the development of the income stream and in making sure they are consistent. It would really depend on the approaches and the assumptions that are used. The Resolution talks about risk for taxpayers. Sometimes, the risk is germane to the type of industry. This is a larger project than one for a single taxpayer as currently worded. It would take a lot of development work.

CHAIR COFFIN:

Are you saying that the base has more than one taxpayer?

MS. RUBALD:

This is across Nevada.

CHAIR COFFIN:

How does Clark County deal with this issue, with regard to Nellis Air Force Base and Creech Air Force Base?

MS. RUBALD:

Assessors start with the cost approach as required by statute and the income approach is used when there is an indication of obsolescence.

CHAIR COFFIN:

Mineral County is looking for consistency. Is there another approach that would help them with their budgeting process?

MS. RUBALD:

We can look into the underlying basis if we limit it to the one taxpayer. The Nevada Tax Commission did consider regulations on possessory interests, and we can expand to include the concepts that relate to the income approach.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):

There may be ramifications for Nevada ranchers relative to the possessory interest issue. We are not sure what the dynamics might be, but we would like to participate in the conversation to better understand the scope of this proposal and how it might affect Nevada ranchers who have grazing permits on federal land.

CHAIR COFFIN:

How did you find out about this bill and the effect it might have on your people?

MR. BUSSELMAN:

We have been following possessory interest for the last 20 years. The wording of the bill, without understanding the details of the proposal, is what brought us to the Committee meeting today. We are still not clear. We wanted to get on the record. We believe there may be ramifications, and we would like to monitor what those might be.

CHAIR COFFIN:

Would that be ramifications on higher taxes for cattle grazing on these lands?

MR. BUSSELMAN:

It could be. I do not know how the present system operates with regard to that, but there may be unintended consequences because you are opening a different situation.

BJORN SELINDER (Churchill County):

In Churchill County, we have Fallon Naval Air Station, a large military installation. There are 31 contractors on the base. The Assessor's office has enjoyed good relations with these contractors for the last 15 years. It would be wise for the Committee to direct the scope to be narrower.

CHAIR COFFIN:

Do you know if the contracts from the Department of Defense are cost-plus?

MR. SELINDER:

I do not know.

CHAIR COFFIN:

Contractors are not averse to paying what is fair as long as they can get reimbursed from the federal government.

MR. SELINDER:

If the taxpayers feel that they were being unfairly treated, the income approach could be used.

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CHAIR COFFIN:

The hearing on S.C.R. 1 is closed. This meeting of the Senate Committee on Taxation is adjourned at 2:44 p.m.

RESPECTFULLY SUBMITTED:

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Mike Wiley,  
Committee Secretary

APPROVED BY:

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Senator Bob Coffin, Chair

DATE: \_\_\_\_\_