

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

**Seventy-Sixth Session
May 13, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 5:00 p.m., on Friday, May 13, 2011, 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/76th2011/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 Marilyn K. Kirkpatrick, Chair
Assemblyman Harvey J. Munford, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary

OTHERS PRESENT:

Autumn Tampa, Private Citizen, Las Vegas, Nevada
Carolyn Edwards, representing Clark County School District
Craig Stevens, Director, Education Policy and Research, Nevada State
Education Association
Alison Turner, President, Nevada Parent Teacher Association
Tim Crowley, President, Nevada Mining Association
Michael Brown, Vice President, U.S. Public Affairs, Barrick
Gold Corporation
Ray Bacon, Executive Director, Nevada Manufacturers Association
Kristin McMillan, President, Las Vegas Chamber of Commerce
Sam McMullen, representing Las Vegas Chamber of Commerce
Bill Uffelman, President and CEO, Nevada Bankers Association
Carole Vilardo, President, Nevada Taxpayers Association
Chris Nielsen, Interim Director, Department of Taxation

Chair Kirkpatrick:

[The roll was called.] I would like to be adjourned by 7:25 p.m., so we can return tomorrow morning at 8:00 a.m. This will give us another opportunity to hear some testimony. I do want to report that I had been working with staff last night and this morning to address some of the questions raised by Ms. Vilardo yesterday. I think after we hear testimony today and tomorrow, we will have a much clearer picture of the legislative intent. I know that the staff was here until 10:00 p.m. working on it, and were back at 7:00 a.m. trying to address all of the concerns. We met with Ms. Vilardo to discuss some of the more technical issues. I believe that she will testify on that, but I will have a full report about all of the sections that were discussed by the first part of the week. We will now open the hearing on Assembly Bill 569.

Assembly Bill 569: Imposes a Nevada transaction tax. (BDR 32-1290)

Chair Kirkpatrick:

Who would like to testify first in southern Nevada? One thing I would like to say is whatever side you are on, it is our job as a policy committee to hear the policy and to hear respectful testimony for the record. No matter what side you

are on, please be respectful to others' opinions. We will hear public comment tomorrow morning.

Autumn Tampa, Private Citizen, Las Vegas, Nevada:

I am a Clark County School District classified employee and have worked for Clark County for approximately 13 years. I am in support of A.B. 569. Clark County School District (CCSD) has had a funding problem for the last several years. Nevada has had a system of acquiring revenue that is structurally unreliable and unstable. In 2009, my position was eliminated due to a budget shortfall in the state and the school district. There were 180 other positions eliminated in my category. We were placed into positions that included a 20 to 40 percent salary reduction, due to budget cuts. Last year, schools went from 11 months to 9 months, resulting in teachers and support staff receiving another salary cut of approximately 18 percent. This year, there are approximately 900 teachers and 700 classified employees who have been identified for reduction in force because of a budget shortfall in education and in the state. We have also had to cut monies for textbooks, and special programs such as English Language Learners (ELL) and Gear Up Tutoring. School employees are being asked to take another cut of between 9 and 12 percent. It is all due to not having enough revenue to balance the budget in Nevada and in the Clark County School District, along with other districts in the state.

Our children's education and future have already been suffering for quite a while. We need a steady and reliable revenue fund for education. I believe that the passage of A.B. 569 will be helpful in providing that revenue for education along with other necessary state funding. Education is very important to me. I believe the children's future, through education and achievement, is critical, and I am in support of A.B. 569. Thank you for your time and consideration.

Chair Kirkpatrick:

Thank you. Please leave a copy of your testimony with the secretary to be posted on the Nevada Electronic Legislative Information System (NELIS) for reference ([Exhibit C](#)). Are there any questions?

Carolyn Edwards, representing Clark County School District:

I am president of the Clark County School Board and President-elect of the Nevada Association of School Boards. I am here today speaking as a trustee for the Clark County School District. I would like to say that we are in support of A.B. 569. We heard a presentation last night by Jeremy Aguero on the restructuring of Nevada, which I am sure you have also seen. We applaud the long-range thinking that this bill proposes to address and to redress our revenue stream. We think that it goes a long way to solve some of our potential

shortfalls that we see cyclically in terms of being dependent on a single industry, primarily gaming. We applaud this, and we support it wholeheartedly.

Chair Kirkpatrick:

Is there anyone else in southern Nevada who would like to testify in support? [There was no one.] At this time, we will move up to northern Nevada. If there is anyone who would like to testify in support, now is the time.

Craig Stevens, Director, Education Policy and Research, Nevada State Education Association:

I would like to express our full support for A.B. 569. We believe that this session is scary with budget cuts, but next session will be even scarier. I do not know where else you can go. All the one-chop monies are gone. Right now, we are talking about money coming directly out of the classroom. It is going to be even worse two years from now. We have to find a solution, and we believe that you are on the right track. We appreciate your moving this forward, because it will be devastating in the future.

Chair Kirkpatrick:

Is there anybody else who would like to testify in support? Ms. Turner, we will move down to you in southern Nevada.

Alison Turner, President, Nevada Parent Teacher Association:

The Nevada Parent Teacher Association (NPTA) does not normally advocate on tax policy, nor is it my intention to do that, at this time. However, we would like to be on the record as supporting the fact that people are trying very hard to solve the revenue side of an equation that is not balanced very well. We thank the Committee for what is clearly going to be hard work and tough sloggling to get through this. We believe this is an approach that had a lot of merit and is certainly worth taking a very hard look at. Thank you very much.

Chair Kirkpatrick:

There are no questions. We will move to northern Nevada now.

Tim Crowley, President, Nevada Mining Association:

I am joined by Michael Brown, Vice President of U.S. Public Affairs for Barrick Gold Corporation. The Nevada Mining Association has long been a proponent of finding ways to stabilize Nevada's tax structure. Even when my predecessor's predecessor participated in the tax task force of 2002, we have established a record of looking for ways to change the tax structure and provide stability. We believe that this proposal is a positive change, and we support it.

Assemblywoman Neal:

How do you benefit from A.B. 569? Can you explain the good portions of this bill?

Tim Crowley:

It is an interesting way to state the question. Nobody likes to pay taxes, and we are not a pass-through business. We will absorb the cost of this tax. The benefit is providing a more stable tax system which is more predictable and broad based.

Michael Brown, Vice President, U.S. Public Affairs, Barrick Gold Corporation:

To add to that, it is my understanding that this measure has been recommended repeatedly by various groups that have studied the Nevada tax system. It seems to be the next natural evolution in the sales tax system to reflect the modern economy as we see it today, and not as it was in 1950.

Chair Kirkpatrick:

I have received over 1,000 emails since yesterday with different opinions on this. It is refreshing to hear business supporting a new type of structure for our state. Thank you. At this time, we will move to questions. Is there anyone with any questions on various sections of the bill?

Ray Bacon, Executive Director, Nevada Manufacturers Association:

I would like to reiterate the comment from Ms. Vilardo recently. There will be some pyramiding in the area of services. Using a resale permit, as we have been, we think is one of the pieces that will have to be dealt with. In the manufacturing sector, we wind up with things like plating, anodizing, painting, and all of those sorts of things which are sent out. The one thing we do not want to see is a structure where it becomes more cost efficient to process work outside of the state. We do not think that is beneficial. However if you decide to set that type of operation up policy-wise, whether it is a resale permit, or some other way, I believe you should watch out for the pyramiding issue. That is the biggest flaw that we found, but I believe you are already aware of that one.

Chair Kirkpatrick:

You do bring up a good point. Regardless of how hard we try, there will be some, but I believe that this will limit it to a small amount. The one thing that I have suggested is for this Committee to decide policy-wise is about the broader base. The broader the base, the smaller the amount. What we do not want to happen is to focus on a few industries. I appreciate that, Mr. Bacon. Have you had a chance to pass this to some of your vendors? If so, was this a common concern? I know many manufacturers have vendors out there.

Ray Bacon:

I did not receive many comments back because of the time frame; however, the few I did get back showed the obvious point that we use enough services that there will be some pyramiding. They are basically saying that as long as we parallel the services issue, along with the components used, it should not be a real issue. It varies a great deal from company to company. As you and I both know, there are small food companies that send their testing outside. The issue is to keep a level playing field and make sure we keep it as parallel to the product structure as possible.

Chair Kirkpatrick:

There is no rush, and this does not have a deadline. The more comments we get from your sector, the more helpful it will be to us.

Ray Bacon:

I have several people looking at it right now in detail.

Chair Kirkpatrick:

Is there anyone else who would like to testify?

Kristin McMillan, President, Las Vegas Chamber of Commerce:

I am the new president of the Las Vegas Chamber of Commerce. Sitting with me is Sam McMullen, the Chamber's lobbyist. To begin, I would like to say that the Las Vegas Chamber of Commerce called for the start of an open and frank discussion on tax structure. We think that is a good thing, and we welcome the opportunity, although we know this will be a difficult and contentious subject matter. It will be something difficult to digest, and we do not know what the outcome of the conversation will be. We do believe that having the conversation is the right thing to do. We applaud the fact that it is taking place. Having said that, we all know this is complicated. We need to be sure that the discussion is thorough and that we all understand it. It needs to be thorough enough to ensure that we have adequately reviewed it to know we are on the right path.

The Las Vegas Chamber of Commerce has stated, in a message to its members, that we may support more revenue. We expressed concerns about cuts to education, and the impacts of potentially increasing class sizes. Since then, the Nevada Economic Forum has come out with an additional \$300 million or more in additional revenue. We find that to be very good news. Also, since then it has been reported that the Chamber has agreed to the new revenue and the taxes that are up for discussion. I want to clarify that is not the case. The Chamber has not taken that position. The position we have taken consistently and firmly is that unless we address some serious and meaningful public

employee reforms, we will continue to drive up additional billions of dollars in unfunded liabilities, which will seriously impede future prosperity and economic growth.

From our perspective, significant reform must be at the centerpiece of any discussion on taxes. Simply adding revenue will not produce the results that Nevada needs to cure this problem. We need to ensure that if and when new revenue is added, it is not being used to enable us to continue along this same, unhealthy path. I would like to provide a few examples of where reform could generate additional tax revenues for education and for other programs. We have performed studies to back this up. Not including teachers and professors, there is a \$1.7 billion gap, over the biennium, between Nevada's state and local public employee pay and the national average. A majority of this difference is at the local government level. Secondly, we pay \$600 million every two years in an attempt to pay down the Public Employee Retirement System (PERS) unfunded liability. Also, we are about to ask teachers to pay 5.3 percent of their PERS contribution, and may take a pay cut. We may be asking state workers to take a 2.5 percent pay cut, with 6 furlough days, or a 5 percent pay cut. Yet, our studies continue to show that local government employees are paid nearly 30 percent higher than the national average, while state workers and teachers are near or below the national average in the private sector. If we ask local government employees to pay the 5.3 percent of their PERS contribution, the same as we are asking educational employees to pay, it would be worth about \$250 million dollars this biennium. Before we decide on new taxes, let us look at the existing ones, and where the money is being spent. We need to ensure that any extra revenue does not simply enable us to continue along this fiscally unstable path.

Chair Kirkpatrick:

There is a section in this bill that refers to paying down the state's portion of the unfunded PERS. We heard in the Assembly Committee on Ways and Means that our employees could all decide to leave because of numerous cuts. Where do we pay local governments' PERS? Are you saying that we currently pay PERS for local government that is unfunded on the state level?

Kristin McMillan:

No, what I am saying is the local government employees are not paying into PERS. The Legislature has recognized that it is good public policy to ask the teachers to pay 5.3 percent of their pay into PERS. Our point is simply the studies that we have produced shows that as a national average, local government employees are paid much more than the teachers are. If it was good public policy to do this for the teachers, why is it not good public policy to do the same on the local government side?

Chair Kirkpatrick:

We had this discussion in an Assembly Committee on Government Affairs hearing this morning. Local government officials need to be a part of the conversation. I feel like the state employees are being included in part of a process that they have no control over. That is unfortunate. Local governments know that they are officials. I get to close their budgets next week, but they need to be in this room with us. That is what we have heard most of the day today. I get it, but some of the state employees are beside themselves that they even have to take a furlough day. What this goes back to is the Chamber of Commerce should have opposed the home rule because the more flexibility we give them, the more the state has to clean it up. I just want to be fair on that response.

Kristin McMillan:

I appreciate that. I have a few more points before I turn it over to Mr. McMullen. We are not talking about supporting the raising of revenue at this point until we have assurances of significant reform. We signed in as neutral. We do have comments about the vehicle or the structure of the bill. To the extent that this vehicle broadens and stabilizes the tax base and more closely and rationally reflects the status of our current economy, it is a very positive thing. Additionally, it is positive that this vehicle will also provide for a reduction on the goods tax side. At the same time we are getting tax reform here, we would get tax relief on that side. The vehicle is somewhat close in administration to the current structure so that we can more easily incorporate the lessons learned in the administration and implementation of the sales tax on goods to lessen the learning curve. Finally, you started looking at what should be exempted as a matter of good policy. We think that is a good discussion to have, regarding health care and rent. Also, in terms of policy and what might be considered regressive, you may want to consider other areas of exemption, which may be appropriate because of issues like double taxation or trying to find incentives that may closely support some economic recovery. There may be areas such as new home construction or retirement services planning that would more closely fit into the category of furthering economic recovery. With that I will turn it over to Mr. McMullen.

Sam McMullen, representing Las Vegas Chamber of Commerce:

I will talk about a few things that may have been brought up before. Since you are looking for guidance, these are issues that may require some attention or clarification. There are a few issues that we believe to be important. You have already heard about the issue of cash-basis accounting. You will need to allow for the election, or if that is too difficult for the enforcement mechanisms, you should either go one way or the other, using accrual or not.

Chair Kirkpatrick:

Is that sections 22 and 24, which we have talked about yesterday?

Sam McMullen:

Yes, you have talked about it. I am also referring to section 30. Usually bad debts are an accrual-based concept. Actually you may want to debate the issue of whether or not it is a cash basis, and report it on a cash basis. Once you receive the money, you pay the tax. That makes some things simpler and easier. It is our understanding that would be something the business community would feel is easier to comply with.

Chair Kirkpatrick:

That is an issue that Ms. Vilardo raised yesterday. I believe it is referenced in section 17 and a few other areas. We did discuss it today, and I will have a full report for the Committee on Tuesday.

Sam McMullen:

One of the things we have heard in the halls is that there would be a pyramiding or stacking issue. I would like to explain that from our point of view. The issue in many ways is that one service is utilized to build another service that is then given to the ultimate consumer, and the taxes are paid. I will provide you with an example. Let us say you are an architect who needs a structural or mechanical engineer's services to validate the plans and certify drawings. If those were \$20,000 worth of architect services, and for ease of reference, they included \$10,000 in structural or mechanical engineering fees, you would utilize a resale mechanism which is similar to product sales. The purchasing service provider would have a resale number and would say to the structural or mechanical engineer, "I do not have to pay this tax because I am going to resell those services in my ultimate product to my consumer, and there will be one tax paid, one time." That creates an audit trail and a process to the extent that if someone does not comply, it can be audited exactly as it is done on product tax. For those of you who may not know, you can have distributors who actually take possession of the goods and actually pay a purchase price at the wholesale or other level, prior to retail. They do not pay tax on the amount they have purchased the goods, for the purpose of further resale. They do that because they have a resale certificate. That is a very common system in the products distribution chain. The one thing that I think is good about that system is while nearly every product sale will have various parties involved, there are very few that are manufactured right to the end user, who is the ultimate retail consumer. The service on services transactions is a much smaller percentage of the transactions. The audit and other responsibilities that may attach to that for compliance and enforcement will be much less than the range of product transactions.

Chair Kirkpatrick:

Let me address that. I understand because I work in the business of hustling croissants all day long. I heard from architects over the summer that they would appreciate something like this, regardless of pyramiding, because they have very small firms of two to three people that can each generate a few million dollars. They never said that pyramiding would be an issue. I am a little bit confused because they actually approached me first. I was concerned about the rates, and I said that the Legislature has the ability to change it. I think that with 1 percent across the board, everybody pays a little something. At the end of the day, if I am the consumer who is getting those plans, I am paying for it. There really was no pyramiding because it pyramided all the way down to me; therefore, I am a little bit perplexed by that specific example because the more we cut people out, the higher the rate will be to consider in order to have any type of yield. That is consistent with many other states. Every single transaction Delaware makes has a different rate. There is a rate of 0.38 percent on some things, and 6.25 percent on others.

I am frustrated because we are doing everything in our power, including having the reform discussion, and it seems this Committee is absorbing a lot of the work this session, and you are preaching to the choir with this Committee. We have worked tirelessly and have been in the middle of 99 percent of the issues. There are many freshmen who are learning everything new. I am still trying to figure out where the \$250 million savings from local government PERS comes into the state's budget, but that is another subject for another day. What is it that people want? I am frustrated enough to go home and be done, allowing everyone to live with the consequences. Everybody wants out, but yet, everybody wants a service. I appreciate your comments and that example but these people came to me. I did not specifically search people out who were looking for a different tax structure. This is the same conversation that happened in 1981, when we changed the tax structure giving the property tax back to the local governments. We have heard across the nation that the way we do business is different today. We do not do business based on goods. We do business based on services. We cannot always be the last state to make the change. I thought this was a fair way to start, but more people want to be out than want to be in. It is very confusing policy for this Legislature. I am out there every day, and I get it. We are trying to make this work, but I am a little bit frustrated.

Sam McMullen:

That frustration could be because this is the second time that I am up before you today. I apologize for that, but let me say that example was thought to have some value in exemplifying the issue. I do not represent architects, so

I am not talking on their behalf. It was just an example. My final point is that you decide that. If the concerns we are hearing from other people . . .

Chair Kirkpatrick:

I know, but where are those people? That is why we are having public testimony. We are not having the public testimony in the halls. You need to tell those people, or you can give me a list. I will call them and they can be in southern Nevada or here tomorrow morning. That is who we need to hear from. This is the one time that we are not doing things in a vacuum. I told Mr. Livermore the other day, last session I did not have the opportunity to look at a bill for four days in order to make a policy decision. I was given three hours. We are trying, so whoever it is in the hallways needs to get up here and put it on the record because we cannot fix it in a vacuum.

Sam McMullen:

If it is a concern that you wish to address, I was trying to indicate, as Mr. Bacon and others have said, many of these mechanisms are already in your sales tax code and may be utilized, if you choose to. I appreciate it, and I guess in some ways, I am just trying to represent the things we are hearing.

Assemblyman Livermore:

I do not disagree with what you are trying to say. In fact, part of my participation in this is being presented with a bill that is attempting to tax services. How do you define those services, and what level are those services being paid? We need to ensure that we do not eventually wind up creating such an increased cost that it kills the economy. When you start taxing one business and follow through taxing all other connected businesses, the final result is the retail industry cannot control the cost anymore, and the service becomes unaffordable. You may gain some revenue with the service component, but the other component is sales tax revenue. If you cannot sell the product because you have taxed it to death, you are going to lose on the other end. Am I right?

Sam McMullen:

I think that is the concern with any tax system. That is why we will not bore you with it today, but we have policies relating to taxation. We did not talk about those because we know you will put those into play such as fairness, stability, and breadth. The last thing we would ever say about any tax system is that you cannot do any more harm; that is unrealistic. It is an excellent point. I think we are quite buoyed up by the fact that the products tax would be reduced. Over time it has been our assumption that the incentive would be to level both sides of the transaction in both the sale of the product and sale of a service. There would be one tax across all transactions. One thing we think

is extremely positive is that if you could functionally find an equivalent tax base in the service transactions, it would allow you to reduce the product sales tax penny for penny. As you raise one, it creates a tax that could enable you to lower dollar for dollar the products. Getting to a 4 percent rate, which would be a possibility, although I do not want to entice or mislead anybody, but if that were true, we think Nevada could benefit from not only the residents and businesses paying less for their products, but we think it would be the kind of thing that people would travel for. They would have a sales tax on products that they could not even begin to imagine in their own territory. Frankly, there are lots of tradeoffs and it is the kind of thing you have to understand to decide whether or not it makes sense. The point is that it has always been positive to us and has given us some strength. The option would be to reduce the tax and give tax relief at the same time that you are restructuring the system. Then the question would be, can we counterbalance that?

Assemblyman Goedhart:

What is your opinion about the fact that currently with this proposal, you would have a different tax rate for services than on goods, and how would that possibly endanger our eligibility to be part of the interstate sales compact? I had heard it was supposed to be equivalent in order to stay in that compact.

Sam McMullen:

I have heard that, although I am not an expert on it. I think that is a place where an expert like Carole Vilardo and the Nevada Taxpayers Association would have to comment on. I will say something that I do not want you to take with any assuredness. There is an indication that is true, to the extent that there are certain items that are taxed, but not with all the services. I do not understand how you can distinguish one from the other, although Ms. Vilardo does.

Chair Kirkpatrick:

I think that the Department of Taxation testified to that yesterday. I believe that we had the conversation that it is a policy decision to wait for the federal government to actually do something. I also think that Mr. Nielson testified that it was \$10 million, with about \$3 million going into the General Fund currently. Therefore, it is a policy for this Committee to make. We have to do something sooner rather than later in order to keep up with the rest of the nation on changing our structure. That brings me to another point. Regarding the section that talks about lowering the Distributive School Account (DSA) rate, going from 2.6 to 2.25 percent, most counties will never reach the 4 percent rate, mostly because of voter overrides. That is a huge miscommunication to our constituents. In Clark County, it may only be 7.75 or 7.25 percent, based on section 70. Nye County would be closer to 6.5 percent. Because I sell to

different counties in the state, I have to be aware of the different sales tax. Depending on what sales tax voter overrides are considered, you may never see 4 percent in a particular county. I just want to be clear because there are many residents listening at home. The voter overrides must be included as well.

Sam McMullen:

Those would stack up on top of any kind of reduction in the state. You are absolutely right. I probably should not have said what I said earlier. I did not mean to mislead anyone. The point was that if there is a significant reduction in products, it is not only a benefit to our citizens and our businesses, but it could have additional beneficial aspects in terms of our revenue.

Chair Kirkpatrick:

There is one other thing that I would like to point out. I called Mr. Lawrence a few months ago to discuss the revenue-neutral because I do not know how you cut off one without having the bridge to be sure there is enough revenue. In my mind, we must have a balanced budget. Mr. Lawrence did not disagree with that point, but I do not know how to change the tax structure without having a bridge. To this date, there is nobody who could answer that for me. I do not know how you can ever get to revenue neutral. I do believe you must have the ability to shut one off. I do not disagree with that at all. The sooner it can be done the better. In this bill, you will also see that any additional dollars go down to paying the PERS unfunded liability, so that no new programs go into place. That is huge, we are currently at 72 percent, and we should be at 85 percent. I think that it is not that we are trying to generate all of this revenue. We are actually trying to get back in line and fill up our rainy day fund. This bill does a couple of things to ensure that if the revenue is good, we will not just go out and start a bunch of programs.

Sam McMullen:

At the risk of volunteering my opinion again, one thing I have learned about your wonderful staff and the Fiscal Analysis Division is when you look to a tax to generate revenue, they will be very careful about making sure the revenue actually generates. The bridging mechanism may be simpler than we are trying to make it. Ultimately the goal is to do whatever you can do, but the ratcheting of that is a function of knowing exactly what the proceeds are on the transaction tax side. Once you have a firm grasp and a concrete understanding of exactly how much revenue will be raised, you can reduce. That is the one thing that I have been taught, not to reduce until there is a balanced budget. It will be an iterative process. There is no question about it. I think it is a function of your goals, which are good.

Chair Kirkpatrick:

This is not my bill, but as the Chair, I have to know the bill.

Assemblyman Livermore:

My question is about the balance of the two taxes and local governments' use of the transaction tax. How do you keep the local governments whole? Will they be entitled to some of the new service tax?

Chair Kirkpatrick:

That is exactly why the bill is written as it is so that sort of thing does not happen. Mr. Guindon, I will allow you to answer that question.

Russell Guindon, Principal Deputy Fiscal Analyst:

I think we are getting a little bit sideways here. I will try to sort through some of the issues so that the members of the Committee and the public will know why the bill is structured as it is. It is the short-run goals versus what would be the intermediate- or long-run goals, if the Legislature chose to go forward with a proposal to add services to a tax base, and then try to make an adjustment to the sales tax and goods. Under current law, the Legislature cannot lower or change the state's 2 percent General Fund rate without a vote of the people. We cannot lower that rate. As has been discussed here, the basic city/county relief tax rate and the supplemental city/county tax rates are rates dedicated to local governments. They are dedicated to go through the consolidated tax distribution account that this Committee has had information on. The rate that is really available to the Legislature in terms of the service tax coming online, yielding money for the State General Fund, allows for lowering of the local school support tax rate. It is the rate that can be lowered, and as the local school support tax rate is lowered, the General Fund would replace that money for K-12 education for the Nevada plan and would distribute a school account funding mechanism for K-12 education. That is the lay of the land. As your fiscal staff, we would be hesitant to consider lowering the basic city/county relief tax rate and the supplemental relief tax rate until we have some idea of what the yield of the tax would be and what the distribution of the yield would be across the 17 counties.

I would agree that it would be a good goal for the state's tax structure to expand into services and move goods allowing for a broader base. We would then work towards a long-run goal of having a common rate on goods and services. It would take more than one session to be able to have that plan implemented because we may have to go to a vote of the people in order to amend the state's 2 percent rate. We want to make very sure of what we are doing and how it will work with changes to the consolidated tax distribution, while we go about changing the goods and bring the services in. It would be

nice to know what that looks like before we have it, and would require some interim study to make those adjustments to the consolidated tax distribution. As the Chair pointed out, there are rates that are currently attached to goods that are bonded or being used. They were voter approved for special projects. I hope that helps the members of the Committee, the people at the table, and the members of the public regarding the issues that will be involved. What we are doing here is bringing the services in, and after seeing it, we can study it in the interim and bring it back next session to work towards the goal of having a common rate against services and goods. Thank you, Madam Chair.

Assemblyman Anderson:

The way I understand the overall idea is if this were to go into effect, we would also extend the sunsets in the Local School Support Tax (LSST).

Chair Kirkpatrick:

Only the LSST is addressed in this bill, and we do need to stick with this bill. I know there are a million other things going on, but we have to get back to this bill.

Assemblyman Anderson:

That actually works in the point that I am getting to. There will be a continuation of the current levels of LSST as approved in the 2009 to 2011 Biennium. In effect, when those sunsets go out and this proposed transaction tax would then go in, it would generate roughly the same percentage paid by an individual business that has both goods and services. Is this correct in one would replace the other?

Russell Guindon:

As drafted, you are correct that the local school support tax rate which is currently 2.6 percent would stay the same for fiscal year (FY) 2012. The transaction would come online January 1, 2012, but then July 1, 2012, the 0.35 percent increase would go away, and it would drop back to the 2.25 percent rate. There would be a 1 percent rate on services, and there would be anywhere from 6.5 to 7.75 percent rate depending on the county and the various local options.

Assemblyman Anderson:

We can assume that individual businesses with both services and goods can expect a similar effect to what they have been dealing with for the last biennium, in terms of the percentage base. Is that correct?

Russell Guindon:

With regard to the sales tax on goods, beginning in FY 2013, the combined sales tax rate that a consumer would pay for goods that are subject to sales tax would be the rates that would have been in place in FY 2009. Services that have never been taxed would now have a 1 percent rate. We have to remember that the predominance will be on the consumer who is purchasing the goods. There is a business to business service, which would be picked up under the services tax, as Mr. McMullen has mentioned. I do not know if I am answering your question, but the bottom line is yes, they will pay the same sales tax rate which was in place in 2009 on goods, but there will be a new tax on services of 1 percent.

Assemblyman Stewart:

Clark County is currently 8.1 percent, and when the sunsets cease, we will go back to 7.75 percent. What is the lowest rate we can reach, considering all of the barriers involved?

Russell Guindon:

Basically, the state's combined rate, which is 2 percent; the local school support rate, which is 2.25 percent; and the city/county relief along with the supplemental city/county relief adds up to 6.5 percent. Any county that has a sales tax rate above 6.5 percent is due to a decision by the county or local governments. In that case, the county or local governments would have decided to impose one or more of the local option rates that are authorized by law. Some of those are voter approved, and some only have the authorization through the local government authority. The question you are asking is a hard one to answer at this point in time. Basically, what we would have to work with in the long run is in Clark County. If it is 7.75 percent, and the combined rate is 6.5 percent, it means there is 1.25 percent in local options that we probably could not do anything about. We would have to be working with the local school support tax, the state rate, and the local rates as we are here, in terms of trying to equalize that rate because we could not do much with the 1.25 percent optional rates, because they could be bonded, et cetera.

Assemblyman Stewart:

Therefore, we could get down from 7.75 percent to roughly 3 percent. Is that a rough estimate?

Russell Guindon:

At this point in time, I really hate to venture a guess. As you can see, the services tax base is where we think it might be as a taxable base. At a 1 percent rate, when it is fully online in FY 2013, we think that given the amount of yield that we have been directed to try to achieve, you could buy the

local school support tax rate down 3.5 percent. In the 2013 Session, if we bring the services transaction tax on services up to 4 percent, what other rates can be brought down? I believe we would want to start getting away from utilizing only the local school support tax rate. It will be a policy decision. Should the local governments participate in the new services tax base, thus buying down the basic city/county relief tax and the supplemental city/county relief tax? I think the intent was to get the tax online and look at the yield in order to study it in the interim and come back in 2013 to answer the question you are asking, Assemblyman Stewart.

Sam McMullen:

My two last points are small. The first is to confirm that there is a way, in current sales tax on products, to differentiate between taxable and nontaxable products. When you go to a grocery store, food is not taxed but some other durable goods are taxed. The stores know how to do that. In a sense, that would be the same mechanism used to differentiate between goods and services, even with a different rate. The second point is not necessarily a major concern. Section 51 indicates that by regulation, the Department may require the filing of reports. Line 26 says, the report must "Set forth the names and addresses of purchasers of taxable services" That could be a very interesting matter, if you are asking someone who is buying a \$5 service to provide his name and address. I thought I would just point that out. I think you may want to clarify what kind of situation would be serious enough to obtain that kind of transactional data from the purchaser. I am finished with my testimony. Thank you very much.

Chair Kirkpatrick:

Section 51 references one of the issues raised by Ms. Vilardo. We did discuss it today, and Legal will provide something in writing. My understanding is because of the first sentence which says the Department "may" require the filing of reports, they may require it, and if they do, the information must be provided. I believe that Legal will write that up, explaining it much better than I just did. We did have a very long discussion with Ms. Vilardo about this. It says, "may require the filing of reports by any person or class of persons having in their possession or custody" Therefore, if it is required and you have the documentation in your custody, it can be requested.

Sam McMullen:

I appreciate that. My point is that those things are not only issues of purchaser information; they are the types of things that have a burden on small transactions. I was thinking you may want to qualify what types of transactions may require such documentation. I am sure your Legal Division will know exactly how to clarify that.

Bill Uffelman, President and CEO, Nevada Bankers Association:

I believe in Carole Vilardo's testimony yesterday, she indicated that you should be careful, and perhaps provide an exemption from the transaction tax for financial services. Obviously, some things are subsumed in the transaction itself. For other things, there is a separate charge whether it is an ATM fee, a cash advance fee, or a stock transaction. As a consumer, it is your money, whether the transactions are exempt with a licensed bank, trust, or savings and loan as opposed to trying to itemize every transaction for which there is a fee. Bear in mind there are institutions that are Federal Deposit Insurance Corporation (FDIC) insured or credit unions that are not insured in that fashion. I hope I am getting the point across that it would be a shame to tax your ability to manage your money through whatever vehicle or institutions that you choose to do business with.

Chair Kirkpatrick:

Thank you, Mr. Uffelman. Mr. Goedhart brought that issue up yesterday. That was a very good point that I do not think anyone thought about. If that were a policy that the Committee wanted to take, it would probably go into section 25 in order to make that direction clear.

Assemblyman Anderson:

I am glad you are here to go through some of these issues. I had questions about interstate versus intrastate commerce. I wonder what transactions would be picked up for financial institutions. I would like for you to come back with a list indicating what transactions would be at an intrastate level.

Chair Kirkpatrick:

Our Legal Division is working on that. They are best qualified to do that because there are some federal and state requirements. Rather than making Mr. Uffelman do that, our Legal Division has been working on it most of the day. That will be a policy and a legal decision regarding what should stay and what should not.

Assemblywoman Benitez-Thompson:

I am glad to hear that there is a concern among financial institutions regarding the 1 percent service fee tax. I would think there would be that same concern on a general ATM convenience fee, which is sometimes \$4 to access \$20. I am glad you are considering the consumer. Thank you.

Chair Kirkpatrick:

Mr. Uffelman, do you have time to get this back to the Bankers Association to review the rest of the bill?

Bill Uffelman:

I forwarded it to them on the day the bill was released; I believe it was Thursday. We talked about it in general, but I have had no reaction. The only reaction was about section 25. I did sign in as neutral on the bill. Having had all of this discussion, my personal opinion is when there is a separate delivery charge, I would presume it bears the 1 percent rate, but if the delivery charge is rolled in, it would not include it. Yet, we have sections that say you are not supposed to subsume those things. You might want to think about that.

Chair Kirkpatrick:

I believe that was brought up yesterday by Ms. Vilardo, who has worked diligently on this.

Bill Uffelman:

I should have known. Thank you, Madam Chair.

Carole Vilardo, President, Nevada Taxpayers Association:

As you requested, I put everything in writing and sent it to you yesterday. I found one item that was not raised before the Committee. For the benefit of people in the audience and for those who are listening, I think it is a very important one for us on the business side. The section I refer to is on page 8, section 31, subsection 2, lines 19 through 20. I will preface it by saying it is a policy decision. It is one that you will have to take on, but there is a sentence that says that you have a total cumulative sum of more than \$2,000. I raise the question, what is the time frame? A person gets to take 0.25 percent for the effort of filling out the paperwork, and yet, the next line is for a total cumulative of \$2,000. As it turns out, that is in effect for the life that you are in business. As a policy decision, I have a problem with that being the one and only time. I want to put that on the record because I realize that I forgot to add this comment previously. You would have a period of time, perhaps six months, for which the Department would not issue any penalties or interest, as people are getting acclimated to the fact that they may owe this tax and what their responsibility is going to be. Thank you.

Chair Kirkpatrick:

I checked with the bill's sponsor. His intent was to ensure that businesses could recoup some of their costs; however, Ms. Vilardo addressed some other issues that it could be an ongoing thing. I confirmed that I would take it back to the bill's sponsor to see what the balance is there. I just have not had time to do that today, and I apologize. Is there anyone who would like to testify on A.B. 569?

Chris Nielsen, Interim Director, Department of Taxation:

I just want to follow up on Assemblyman Goedhart's question about streamlining. It is my understanding that to be in compliance with the Streamlined Sales and Use Tax Agreement, the rate does need to be the same, and the definitions for the services need to be the same as they are currently written under the Streamlined Sales and Use Tax Agreement. That does not mean that we would automatically be expelled, but it would put our status in serious question.

I also have four comments. The Department has some bills in various stages moving through the Legislature currently. I would ask that if this bill moves forward, those provisions from other bills are incorporated into this bill. Section 52, which addresses confidentiality, mirrors the existing rule we have for sales tax. Senate Bill 33, the Department's bill, proposes to tweak that a little bit. It will not really be changing it but will make it easier to administer. We would ask that if S.B. 33 becomes law and A.B. 569 becomes law, that they contain the same language.

Section 61 addresses the executive director's ability to wave penalties or interest in certain circumstances. In Assembly Bill 504, the Department recently submitted an amendment that proposes to reduce the interest from 12 percent for deficiencies and 6 percent for overpayments to 9 percent and 3 percent. If that moves forward, we ask that this bill reflect the same rates.

Section 62 addresses the responsible person statute that the Department currently maintains. Senate Bill 31 proposes to add the word "willful" back into this. This is actually a stronger standard, and the word "willful" would reflect the way the federal government administers it. We ask that if S.B. 31 moves forward, the word "willful" be incorporated into section 62 of this bill.

The last request we have is about section 65. This section addresses the waiver of penalties and interest. In S.B. 31, the Department has proposed expanding that to include the short-term lessor, or the car rental tax. This is a historical oversight. Things happen from time to time, and the Department currently does not have the ability to waive that in certain circumstances. We propose that this bill includes it in order to be consistent.

Chair Kirkpatrick:

Thank you for putting that on the record. Legal can incorporate those changes. Our Committee bill was A.B. 504. We definitely do not see a problem with that. We will make sure we incorporate the language in all the related bills. Are there any other questions? Is there anyone else who would like to testify on A.B. 569? [There was no response.] Okay, let us close the hearing on

A.B. 569. We will be back here tomorrow at 8 a.m. for public testimony. For the Committee, I have asked the Senate if they could give us an informational update on their status, so we would have time to research certain information on NELIS. I do not know that they will be able to accommodate that, but it is on the agenda. We are adjourned [at 6:16 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Recording Secretary

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: May 13, 2011

Time of Meeting: 5 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 569	C	Autumn Tampa, Private Citizen, Las Vegas, Nevada	Written Testimony