

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

**Seventy-Sixth Session  
May 17, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 8:05 a.m. on Tuesday, May 17, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/](http://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](mailto: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:**

Senator Joseph P. (Joe) Hardy, M.D., Clark County Senatorial District  
No. 12

Senator David R. Parks, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Russell Guindon, Principal Deputy Fiscal Analyst  
Michael Nakamoto, Deputy Fiscal Analyst  
Linda Blevins, Committee Manager  
Mary Garcia, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Terry E. Rubald, Chief, Division of Assessment Standards, Department  
of Taxation

Carole Vilardo, President, Nevada Taxpayers Association

Trevor Hayes, representing Nevada Press Association, Inc.

Joshua G. Wilson, Assessor, Washoe County

Christopher G. Nielsen, Interim Executive Director, Department  
of Taxation

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction  
Trades Council of Northern Nevada, AFL-CIO

Jack Mallory, Director of Government Affairs, International Union of  
Painters and Allied Trades District Council 15; representing  
Southern Nevada Building and Construction Trades Council

Paulina Oliver, Tax Manager, Department of Taxation

Bryan Wachter, representing Retail Association of Nevada

Jeremy Aguero, Principal Analyst, Applied Analysis

John Griffin, representing Amazon.com, Zappos.com, and TechAmerica

Margaret Borso, Private Citizen, Fernley, Nevada

Michele W. Shafe, Assessor, Clark County

Jeff Payson, Appraisal Manager, Assessor's Office, Clark County

Barry Smith, representing Nevada Press Association, Inc.

Erin Neff, representing ProgressNow Nevada

Howard Watts III, Field Director, Progressive Leadership Alliance  
of Nevada

Graham Hollister Jr., Private Citizen, Genoa, Nevada

Nathaniel Phillipps, Private Citizen, Las Vegas, Nevada

LeLiana DeLeon, Private Citizen, North Las Vegas, Nevada

Manal Toppozada, Private Citizen, Sparks, Nevada  
Janine Hansen, representing Nevada Eagle Forum  
Christi Cakiroglu, Private Citizen, Reno, Nevada  
Michael Randolph, Private Citizen, Las Vegas, Nevada  
Paul J. Enos, Chief Executive Officer, Nevada Motor Transport  
Association

**Chair Kirkpatrick:**

[Roll was taken.] We will be taking the agenda items out of order this morning. I will open the hearing on Senate Bill 32 (1st Reprint).

**Senate Bill 32 (1st Reprint): Makes various changes relating to equalization of property valuations. (BDR 32-433)**

**Terry E. Rubald, Chief, Division of Assessment Standards, Department of Taxation:**

I am testifying in support of Senate Bill 32 (1st Reprint). As originally proposed the bill has three main components. The first component was to extend the session of the State Board of Equalization to November 1. The caseload of appeals before the Board has steadily increased over the years. When I first started as chief in 2000 the annual caseload was about 88. This year we had a caseload of 780. In recent years the caseload has gone as high as 1,200 cases. With the advice of the Office of the Attorney General, the Board has had to go beyond the current deadline of September 30, but we would prefer to have that ability clearer in the law.

The second component is to clarify under what circumstances the State Board will notify local governments about actions which might have a substantial effect on budgets. Individual cases rarely produce a substantial effect on the total budget of a local government but a broad equalization action in which values might be raised or lowered for several hundred properties at a time to equalize among jurisdictions, that kind of action could have a substantial effect. This bill clarifies that the Board would notify local governments that might be affected by such broad equalization actions no later than April 30. The April 30 date is about two weeks later than what is currently in law. The purpose of that is to give the Board more time to notice affected entities but still provide that notice during the budget season so that local governments can use that information before they adopt their final budgets.

The third component is to provide notice of meetings on the Department of Taxation website and to eliminate the requirement of notice through the newspapers. I believe this was a change originally proposed by the Department of Administration for budgetary reasons, but it also has the effect

of reaching more people. For instance, most of the appeals of taxpayers in the northern counties are held in Carson City which does not require the notice in the newspaper. Putting the notice on the Internet thus makes the information about the meetings available to all throughout the state. Similarly, appeals of taxpayers in the southern counties, including Lincoln, Nye, and Clark, are heard in Las Vegas, and the availability of information on the Internet reaches more people.

I believe there was a technical amendment added that would clarify that appeals to the county boards of equalization can be made after January 15 if the deadline date falls on a Saturday, Sunday, or legal holiday.

**Chair Kirkpatrick:**

Because we have so many new members, could you please briefly go through the equalization process?

**Terry Rubald:**

Every taxpayer has the right of appeal for the determination of value from a county assessor. The first step in the appeal process is to go to the county board of equalization. Those appeals are heard between January 15 and the last day of February. If the taxpayer or the assessor is not satisfied with the decision of the county board, either party can then appeal to the Board no later than March 10 of each year.

When I spoke of the number of 780 appeals, those are individual appeals of taxpayers throughout the state. The Board also has the duty to equalize. That means to ensure that all properties of a similar nature are being treated similarly. Typically that would involve properties across jurisdictional lines. There has not been much action on that front, but we do have regulations that provide for it in case we need to do it. We anticipate that if an equalization action occurred we would need to let the counties know about it in sufficient time to accommodate their budgets.

**Chair Kirkpatrick:**

Does anyone have questions?

**Assemblyman Ellison:**

Section 3, subsection 3 indicates you will post on the website. How are you planning to notify the public to go to the website?

**Terry Rubald:**

In any case, the parties to the appeal are always noticed by certified mail. To let the general public know we are in session, we will post notice on our website.

**Assemblyman Ellison:**

You will not advertise in the newspaper to let people know where to go, correct?

**Terry Rubald:**

Currently we advertise in the Las Vegas newspapers when we are meeting there.

**Chair Kirkpatrick:**

In section 3, lines 7 and 8, it references "more than one county." You stated that you have not seen it in more than one county at this time. I was trying to envision where that might specifically happen. Do taxing districts cross county lines?

**Terry Rubald:**

An equalization would happen if, for instance, the assessed values for a certain type of property were seriously outside the allowed range of assessed value across an entire county or perhaps several counties. That is when we would have a broad equalization action.

**Chair Kirkpatrick:**

I was trying to imagine how that would work with 17 counties. Possibly two or more counties would have similar interests, and that is where there could potentially be an issue. I cannot see Clark County and Lyon County having the same issues.

**Terry Rubald:**

You would be correct. Certainly local circumstances affect value. If, for instance, there were several counties that valued agricultural land not in accordance with the manual that is adopted by the Nevada Tax Commission, we would want to correct that across that group of properties.

**Chair Kirkpatrick:**

I understand. Are there any other questions? [There were none.] Is there anyone who would like to testify in support of S.B. 32 (R1)?

**Carole Vilardo, President, Nevada Taxpayers Association:**

We support the reprinted version of S.B. 32 (R1).

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support of S.B. 32 (R1)? [There was no one.] Is there anyone who would like to testify in opposition to S.B. 32 (R1)?

**Trevor Hayes, representing Nevada Press Association, Inc.:**

We are in opposition to section 3, subsection 3, of S.B. 32 (R1). During the testimony on behalf of this bill it was mentioned that moving notices to an Internet site would provide access to everyone. I think that is a bit of a mischaracterization. Not everyone has Internet access. You talked about how free it is, but it costs \$300 to \$400 for a computer and \$50 per month for an Internet connection. You must have the knowledge that there is a State Board of Equalization. Before I came up here in the 2007 Session, I had not heard of the State Board of Equalization, but now to find out important information about property values in their neighborhood people are supposed to find the website of a Board that most Nevada citizens do not know exists.

Putting it on a website is temporary. The average website is up for about 43 days. If you publish notice in the newspaper you have a permanent record. If the information was put in properly, it is distributed to a wide network of people in the community. We think the Internet is an invaluable additional resource. All public notices placed in newspapers in the State of Nevada are additionally put for free on the Nevada Press Association's Nevada Public Notice website. These notices are already on the Internet and already reaching the audience that the advocates of this bill said they want to reach, and they are on a site that is easier to find and easier to search than a site for a board that most people do not know exists.

We think that adding additional Internet resources to this is a valuable resource. If I want to know that my neighbor is appealing the property tax and getting a better deal, I am not going to a website that I do not know exists. Having it published and distributed into the community enhances the ability for more people to find out that information. We think that changing language from "or" to "and" would rectify the problem. The more people who can find the information the better it is.

**Assemblyman Livermore:**

I concur with Mr. Hayes. I have been a proponent throughout the session of the public being able to access information through both media, especially the verification of the public dates, the messages, and the security of being in print. Once it is published it cannot be altered, changed, or amended.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] Is there an assessor here who is willing to come to the table to testify and verify the process outlined in section 3, subsection 1?

**Joshua G. Wilson, Assessor, Washoe County:**

I was trying to quickly review section 3, subsection 1.

**Chair Kirkpatrick:**

In this section, I believe it says that the assessor has to go through the regular process and the Board of Equalization is an additional step. The county would still have to notify people of the meetings.

**Joshua Wilson:**

Yes, that is correct. This change to statute is applicable to the State Board of Equalization, which is an appellant body of the county board of equalization. All of the normal noticing provisions at the county level as well as at the state level will continue. From the testimony, it sounds as if the Department of Taxation is required to print and publish the meeting dates in Clark County in the newspaper, but it sounds like that requirement is not applicable in northern Nevada.

**Chair Kirkpatrick:**

If I access the Clark County website it lists when the meetings are and how you can research your property tax. Does Washoe County do something similar?

**Joshua Wilson:**

Yes, I believe there is a statute in place that requires the county clerk to publish in the newspaper a list of all of the potential county board of equalization hearing dates. Once those dates are finalized, the individual taxpayers are notified by written correspondence as to when their hearing date will take place.

**Chair Kirkpatrick:**

There is currently a process in place in the county, and once it gets to the state level they want to put the notice on the Internet.

**Joshua Wilson:**

I believe that is in addition to a 30-day certified mail notice requirement that the State Board of Equalization utilizes.

**Chair Kirkpatrick:**

Thank you. I appreciate the information. Are there any questions? [There were none.] Is there any additional testimony in opposition to S.B. 32 (R1)? [There was none.]

There being no additional testimony, I will close the hearing on S.B. 32 (R1) and open the hearing on S.B. 33 (R1).

**Senate Bill 33 (1st Reprint):** Consolidates provisions requiring confidentiality of certain taxpayer-specific records. (BDR 32-435)

**Christopher G. Nielsen, Interim Executive Director, Department of Taxation:**

Before you is a Department of Taxation bill, Senate Bill 33 (1st Reprint). I will give you a brief overview.

Under existing law certain records and files of the Department are confidential and privileged. For example, *Nevada Revised Statutes* (NRS) 363B.100 makes certain records related to the Modified Business Tax (MBT) confidential. A similar rule exists in sales tax under Chapter 372.750 of NRS. However, each of these rules for each tax reads a little differently. I suspect the reason for that is the rules have gone into place in different sessions. The Department has largely been administering and interpreting these rules in the same manner in that taxpayer-specific records are generally confidential unless appealed in a public body such as the Nevada Tax Commission or the Department of Taxation.

This bill is a consolidation bill and a technical bill. Section 1 proposes to consolidate the confidentiality rules into one rule contained in Chapter 360 of NRS for the tax types that currently enjoy a confidentiality status. For example, section 1, subsection 1, sets forth a general rule that records and files of the Department are confidential unless one of the exceptions would apply. Records and files are defined in subsection 5 to mean records related to a taxpayer's specific information including investigation, audit, and financial information.

The exceptions to the confidentiality rules are outlined in section 1, subsection 2, and include publication of statistics, stages of information with the Internal Revenue Service (IRS) in accordance with any compacts, disclosure to the Governor, and disclosure in appeals to the Nevada Tax Commission. Another exception includes when certain federal agencies request confidential information in a criminal investigation. These exceptions are very similar to the exception currently in statute.



I want to reiterate this is how the Department currently administers and interprets the existing confidentiality rules. This bill simply consolidates and fine-tunes the rules for administrative purposes.

I want to make it clear that the intent of this action is not to add confidentiality rules to tax types that do not currently enjoy any confidentiality. For example, there is not currently a specific confidentiality rule with respect to the traditional property taxes or the Net Proceeds of Minerals Tax.

Section 2 is related to confidentiality. It proposes to codify into statute existing language that is currently contained in regulation under Legislative Counsel Bureau (LCB) File No. R140-07. That really addresses the confidentiality interplay between the open meeting law and the Department of Taxation's confidentiality rules. More specifically, section 2 proposes to amend Chapter 360.247 of NRS to incorporate the previously approved regulatory language that applies when a taxpayer appeals to the Tax Commission and the taxpayer requests a partially closed hearing so that the Tax Commission can hear proprietary information.

In these cases, the Tax Commission will determine whether certain information such as trade secrets are proprietary and will open up the hearing to the public to vote and deliberate. This is a partially closed hearing to redact certain trade secrets. This is under current statute.

What section 2 of this bill proposes to do is to close an unintended loophole in this process. Under the current open meeting law rules, once materials are provided to a public body such as the Tax Commission, the materials become public. However, under existing law and regulation the taxpayer may request a partially closed hearing at least 14 days in advance of the hearing. Because materials are sometimes provided to the Tax Commission more than 14 days in advance, the taxpayer may not have an opportunity to request such a hearing.

Section 2, subsection 3, closes this loophole and allows taxpayers to exercise their right to request a partially closed hearing. The section also makes it clear, however, that if a taxpayer does not make such a request the records become available to the public prior to the meeting.

That concludes my testimony.

**Chair Kirkpatrick:**

Thank you. Are there any questions?

**Assemblywoman Neal:**

I have two questions. Section 1, subsection 1(b) says, "May not be required to produce any of the records or files for the inspection of any person . . . ." What were the situations or circumstances where you needed to create this limitation?

**Christopher Nielsen:**

This is something that is in existing statute so I cannot tell you the policy of when it went in, but how it applies in real lay terms is that we get many requests from private parties in litigation or parties in litigation in other states for information that is specific to taxpayers in Nevada. We do not want to get involved if we do not have to, especially in private matters, unless the taxpayer consents to releasing their own information. In the case of a government entity in a lawsuit, it is typically not our policy to get involved unless the taxpayer consents. I believe that is the reasoning behind section 1, subsection 1(b). There are exceptions. In a criminal prosecution I think that it is language that Senator Steven Horsford, Clark County Senatorial District No. 4, put in and we support. It is different when the United States Attorney's Office is prosecuting someone for federal tax fraud and there is some overlap with state taxation.

**Chair Kirkpatrick:**

Assemblywoman Neal, it was probably in 2005 or 2007 that we first put a portion of this in statute, and we went back and rewrote it because there were times when the state needed to release certain information. One instance would be for Sales Tax Revenue (STAR) bonds which the Assembly Committee on Government Affairs heard. That is the retailer's proprietary information so they would not have to release it because then the retailer is at a competitive disadvantage. It could not be open to everyone. We could ask for additional information from the Department of Taxation.

**Assemblywoman Neal:**

The other question is on section 1, subsection 2(f), in the exceptions where it says, "Exchanges of information pursuant to an agreement between the Nevada Tax Commission and any county fair and recreation board . . . ." What are the circumstances where you have an agreement to exchange in this context?

**Christopher Nielsen:**

The language has been in statute for many years. I do not know the policy behind it, but I can tell you how it works. The most common scenario is a local government such as Washoe County would come to the Department of Taxation with an issue with a taxpayer in the county, whether tax related or some other legal problem. The county would submit a request to the

Department of Taxation for the taxpayer's specific information. We will take the request and make a recommendation in an open meeting with the Tax Commission, whether or not we agree that the information should be released. The agreement is on a case-by-case basis. We will take it to the Tax Commission and the public body and they will discuss whether or not they want to release the information. If they do, we will share it with the local government. If they do not, the information will remain confidential.

**Assemblywoman Neal:**

I was wondering how tax records were implicated by the county fair and recreation board. I am assuming it has to do with use of the land for a particular project.

**Christopher Nielsen:**

As far as how it relates to the county fair and recreation board, I could not tell you specifically. I think that was probably mentioned in statute several years ago because they are a local government board that spends local government tax money not unlike a regular local government such as a county or city.

**Chair Kirkpatrick:**

Mr. Nielsen, is the county fair and recreation board like the Las Vegas Convention and Visitors Authority? I believe there is something in the statute that defines a recreation board. I can have staff find that information.

**Christopher Nielsen:**

That is my understanding. I would have to look at the definition, but I think that by reading the language it is clear that an exception can apply when a local government or quasi-local government is involved. The policy is that they may not always need the information, and that is why it has to go to the Tax Commission on a case-by-case basis.

**Chair Kirkpatrick:**

I think that goes back to the proprietary information because they are set out to do something as well.

**Assemblyman Anderson:**

Can you go over what you would consider proprietary information? I would think if determining a tax liability a lot of that information may be based on revenue earnings, et cetera. Much of that information is released to shareholders. If it is publicly traded, it could be put out for everyone to see.

**Christopher Nielsen:**

While it is true that certain information may be out in the public domain, it has been a long-standing policy of the Legislature.

The most common type of information held confidential is in the sales tax arena. If you are a small business, I do not believe it is a good policy for the small business owner to call the Department and ask what the sales are for the competitor down the street. Certain information can be extracted from that. As far as what is deemed proprietary, that would include trade secrets. When we do a full audit, for example, many things are contained in the audit that are specific to that taxpayer. It could be the amount of sales, how much they pay their employees, or other information not readily available to the public. If it is a sophisticated business, there may be some technical information that could be confidential. I think that would be information considered proprietary. In order to be deemed proprietary it has to go in front of the Tax Commission. They would temporarily close the meeting and discuss whether something is proprietary or not. It is not up to the taxpayer. Each piece of information is considered by the Tax Commission. If something is considered proprietary, the Tax Commission would redact it, but first they would reopen the meeting to deliberate and vote in public.

**Chair Kirkpatrick:**

Another example would be the Leadership in Energy and Environmental Design (LEED) projects center in our state. They have construction dollars, intent, and other proprietary information on how to ensure their projects come to fruition. We have seen some cases where people thought they had more proprietary information than the Tax Commission had agreed to so there is a struggle. The Tax Commission is supposed to represent the consumer. There are cases where not all information can be made public.

**Christopher Nielsen:**

I am glad you brought that up. Costs are a big issue. When we perform audits and see invoices from vendors where different customers are charged different prices, we consider that proprietary information unique to that business. That information is considered confidential under existing statute and under the proposal in S.B. 33 (R1) unless it is appealed in public to the Tax Commission.

**Assemblywoman Bustamante Adams:**

On page 3 of the bill, lines 29 and 30 state, "The Executive Director may charge a reasonable fee for the cost of providing the requested information." Can you confirm who pays that fee and what would be the range of the fee?

**Christopher Nielsen:**

I believe we have historically charged 5 cents per copy. When someone requests something and it is not confidential, if it is only a few pages we do not charge a copying fee. To my knowledge we have never received any complaints about access to information. If it is several thousand pages, we will charge the copying fee.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] Is there anyone who would like to testify in support of S.B. 33 (R1)?

**Carole Vilardo, President, Nevada Taxpayers Association:**

We are in support of S.B. 33 (R1). One of the major things is trying to make the language consistent from the various sections and get it into Chapter 360 of NRS. Chapter 360 of NRS is the administrative provision for all taxes collected by the Department of Taxation. It clarifies the language so that a person liable for three or four taxes with slight variations would not have to know what is in each individual Chapter.

**Chair Kirkpatrick:**

Are there any question? [There were none.] Is there anyone else who would like to testify in support of S.B. 33 (R1)? [There was no one.] Is there anyone who would like to testify in opposition?

**Trevor Hayes, representing Nevada Press Association, Inc.:**

Our concern comes in section 2, subsection 2. In 2007, we made significant changes to the rules regarding closed hearings and tax appeals. This is a loophole, as Mr. Nielsen pointed out. We understand there is certain information that is proprietary by law, and we worked closely with former Speaker Barbara Buckley, former Chairman of the Assembly Committee on Judiciary Bernie Anderson, and others to make these hearings as open as possible and to close just the portion that dealt with proprietary information.

The way the law is now, in section 2, subsections 2(a) and 2(b), there are provisions for asking for the portion of the hearing dealing with proprietary information to be closed. The way the open meeting law works is that anytime the body that makes the decision is given information or documents, it is open to the public. Mr. Nielsen pointed out that sometimes these documents are given more than 14 days or more than 5 days prior to the meeting. The reason the open meeting law calls for documents to be open records once they are given to the body that makes the decision is that sometimes complex information takes awhile to comprehend. If the Tax Commission is given these documents more than 14 days in advance, I would suppose that is because it is

difficult to digest information that takes more than 5 days to go through. The public, we believe, should have the same opportunity to look at the information that the Tax Commission has. I think the better solution for this loophole would be to move out the time deadline for requesting that a portion of the meeting be held privileged. They are applying for an appeal 30 to 60 days out. Why could it not be a part of the application for an appeal that we would like to keep this portion proprietary or at least move the deadline out 30 days? Often five days does not give enough time for the public, the press, or others to learn of this and to procure the documents. Often the documents are large and have to be obtained directly from the Commission. This can take several days. If we move the date forward we can keep the open meeting law intact. Once the information is given to the Tax Commission, it can be made available to the public.

**Chair Kirkpatrick:**

Thank you, Mr. Hayes. Did you testify to this on the Senate side?

**Trevor Hayes:**

Yes, I did.

**Chair Kirkpatrick:**

The Senate decided not to take your amendment?

**Trevor Hayes:**

That is correct.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] Is there anyone else who would like to testify in opposition to S.B. 33 (R1)? [There was no one.] Is there anyone wishing to testify as neutral on the bill? [There was no one.]

Mr. Nielsen, do you have final remarks?

**Christopher Nielsen:**

I would like to clarify that the regulation I referenced that this body is being asked to codify in section 2 was a result of several workshops where, I believe, the Nevada Press Association was involved. It went through and was approved by the Tax Commission and the Legislative Commission. From my standpoint, this issue has already been vetted, at least with respect to the timing of the request. We have to notice taxpayers 21 days in advance when their case is going on the agenda. There are some timing problems if we push this request out any further than the 14 days and 5 days. Sometimes issues come up that the Tax Commission must hear at the next meeting date, and we may not have

30 days or even 14 days. That is why I believe the 14 days and the 5 days are a reasonable compromise and are what was agreed upon at the workshops.

**Chair Kirkpatrick:**

The 14 days, which is the process you have been using, is currently in regulation and there have been no complaints. Is that correct?

**Christopher Nielsen:**

There have been no complaints and we rarely get a request to have a portion of the meeting closed. It used to be more commonplace for a taxpayer to request closed hearings. In the old law the hearing was either closed or open. Now, as a result of litigation, even if the request is granted it is just for a small portion of the hearing.

**Chair Kirkpatrick:**

Since there are no more questions, I will close the hearing on S.B. 33 (R1). I will open the hearing on Senate Bill 377 (1st Reprint).

**Senate Bill 377 (1st Reprint):** Establishes provisions authorizing public-private partnerships for certain projects. (BDR 22-297)

**Senator Joseph P. (Joe) Hardy, M.D., Clark County Senatorial District No. 12:**

Senate Bill 377 (1st Reprint) started out as a nonsimple bill which looks at the concept of public-private partnerships. I had a constituent call from the Logandale-Overton area who was concerned about the viability of the Lost City Museum and whether there was a way to use private resources and volunteers to keep the museum open. I told him I would be happy to add this to S.B. 377 (R1), so what used to be different ways of looking at public-private partnerships became the public-private partnership of this museum. The bill's genesis was to recognize that in these times of trouble we can use resources outside of the public venue and help the public keep things open that are important to them. That is the genesis of the bill. The public-private partnership way of doing things is the bulk of the bill. I would be happy to consider the Committee's suggestions for improving the bill.

**Chair Kirkpatrick:**

Section 11 says that *Nevada Revised Statutes* (NRS) Chapters 332, 333, 334, and 338 do not apply to all public-private partnerships. Is that correct?

**Senator Hardy:**

That is correct.

**Chair Kirkpatrick:**

Page 4, section 12 discusses bonds. I do not understand the language on line 41, "shall never be a debt of the State under Section 3 of Article 9 of the *Nevada Constitution*." I am not familiar with that section and would like some clarification.

**Senator Hardy:**

I will provide that information to the Committee. I am not trying to make this more difficult, but I think the discussion about public-private partnerships has to have some comfort level. I am not opposed to trying to figure out how to do this in such a way that the Committee has comfort with what they are doing, and we do not have to overreach to help somebody keep the museum open.

**Chair Kirkpatrick:**

We do need more public-private partnerships, but this takes out the key chapters that the public uses.

Does anyone else have questions?

**Assemblywoman Pierce:**

I thought that museums could already accept private donations.

**Senator Hardy:**

Yes, it is acceptable. I think what happened with the Lost City Museum was that when we were looking at closing the museum it was not helpful to get donations. Operating expenses can be quite significant.

**Assemblywoman Bustamante Adams:**

Page 3, line 36 of the bill says, "The public agency may reimburse an unsuccessful bidder for a portion of the cost of preparing a proposal . . . ." Do you know why we would do that?

**Senator Hardy:**

This bill may be overreaching, but I think the discussion is appropriate. Sometimes what a public-private partnership will do is send out a request for proposal (RFP) or negotiations. The respondent might indicate that it would cost them money to prepare a bid, and they would like to find an opportunity to recoup the costs for the bid.

The discussion we are having here is a generalized discussion on public-private partnerships. The original bill contained everything that possibly could become a public-private partnership. I wanted to make sure that if we did anything that



could be huge, the state would have the option of accepting or not accepting a bid. This is not mandating the state do anything but leaving the options open.

**Assemblyman Anderson:**

On what scale do you anticipate this would be used by a state agency? Have you had any conversations with the people at the Lost City Museum? Are they planning on any significant building projects?

**Senator Hardy:**

This is more conceptual than a plan to do something. What is our intent as a state to look at public-private partnerships? If we are interested in a public-private partnership, what is the framework that we would suggest in statute before we go out and talk about it? This provides a framework as it is, and the framework itself is probably bigger than a museum in Logandale-Overton. If the Committee had the desire to make this bigger or smaller, I would be amenable to that. I believe that Anthony Ricco of Logandale, Nevada, is probably in Las Vegas and could possibly address some of your questions regarding the size of the museum and other specific questions.

**Assemblywoman Bustamante Adams:**

On page 4, line 13, it states, "A private partner is not required to hold the licenses and certifications required to undertake the work for the project . . . ." Can you give me your thoughts on that?

**Senator Hardy:**

The private partner may be the one who puts it all together but does not put the nail in the stud or put the pavement on the road. He would not have to have the knowledge of how to put it together as much as be the partner in "general contracting" or the person who puts the project together and has the work done.

**Assemblywoman Bustamante Adams:**

So would the partner be held responsible for the liability if something failed on the project?

**Senator Hardy:**

I think that is the concern the Chair voiced. Obviously, the contract the state does has to reflect that the state does not have that liability. We cannot be in that position. The state cannot have additional liability.

**Assemblywoman Bustamante Adams:**

Page 5, lines 19 through 21 say, "Information obtained by or disclosed to the public agency during the procurement or negotiation of a public-private partnership may be kept confidential . . . ." Can you explain the concept behind this section?

**Senator Hardy:**

Considering what the state would or could do, they could have different people competing for the public-private partnership project as it applies to the bill. The museum is in a different situation. As it applies to the concept of public-private partnerships, there may be some confidentiality needed so that the business plan is protected and the person does not have pseudo-bidding processes in such a way that they do not reveal confidential business plan information.

**Chair Kirkpatrick:**

I think there is more confusion as we go through the bill. In section 11, none of the state procurement pieces are required, but in section 10 it allows everyone who bids to go back and be refunded for the cost of bidding. In your comments to Assemblywoman Bustamante Adams it appeared that you are holding all of the information tight between the private contractor and the public museum, but it is an internal contract. There is no RFP or other bidding process and anyone who wants to be a part of the bidding gets their money back.

Section 3 of Article 9 of the *Nevada Constitution* has to do with the 2 percent. I do not understand how that specifically has to do with the 2 percent as far as bonding. I want to take a closer look at that. There are additional questions because it seems to be very fluid across the board.

**Senator Hardy:**

I appreciate the complex nature of the bill, which is why I have prefaced and will end with, "Yes, this Committee can do what they need and listen to Anthony Ricco." The crux of it is that I would like to make sure we keep museums open in the State of Nevada.

**Assemblyman Ellison:**

Under section 10, subsection 1 it states, "the creation of a short list of qualified proposers . . ." and in subsection 4 it states, "The public agency may reimburse an unsuccessful bidder . . . ." Usually when that happens it is if you have somebody helping to do a design for short work. I think that needs to be clarified and straightened up. I think that will open Pandora's box from this day forward. I would like to see that corrected, if possible.

**Assemblyman Livermore:**

Section 9 states, "A public agency may do such things as are necessary and appropriate to carry out a project, including, without limitation: (a) Plan, design, finance . . . ." I am concerned about the word "finance" because it connects to section 12, subsection 1(c) on pages 4 and 5, regarding the process of revenue bonds and notes of public agencies to finance the project, and is connected to section 13, which states, "information obtained by or disclosed . . . ." You want to keep that information private, so how do you see this working, with a public agency doing financing through a process of revenue bonds as a form of payment and security of those, and at the same time keeping the partnership exempt from release of proprietary information? How does the public get full disclosure of what this public agency is going to undertake and invest the public's good faith and will?

**Senator Hardy:**

Thank you, Assemblyman Livermore. I think you have hit the crux of the interaction between public and private partnerships and the transparency that people have to figure out for their comfort level. I think you are right on point with that. I do not know that I have the answers, but I think those are the questions we have to ask.

**Assemblyman Livermore:**

There has been dispute in Carson City's local government for the last few years over a project called the City Center Project and the public's right to get information and understand the partnership and the investment of public money. There needs to be broader thought about the public's rights and involvement in these types of projects. It might sound good until you start understanding that the public side is going to invest and pay a huge price to get a project. You may not have the answer, but that is my concern with the bill.

**Senator Hardy:**

I think your question illustrates well why you are where you are and collectively why we are where we are. We all come from different backgrounds and some come from areas that have been burnt. It is good to have those people who have been singed to say, "Watch out because this is hot." I think when we start blithely or liberally or randomly talking about public-private partnerships there has to be discussion about what are the bounds and what is the comfort level and what has happened before that did not work and, therefore, what we want to avoid.

**Assemblywoman Neal:**

In section 13 the language is saying, "Information obtained by or disclosed to the public agency . . . may be kept confidential," but in section 14 the scope

implicates eminent domain because it says, "public agency may acquire, condemn or hold real property . . . ."

Section 14 says, "The public agency may grant . . . right of entry for such real property . . . ." Can you educate me on particular case law you reviewed that said we are going to enter into a confidential agreement where the public agency will condemn property for a private-public partnership? The way this bill is structured a private partnership would reap the benefits of this kind of relationship. I was reading the *Nevada Revised Statutes* (NRS) under eminent domain and the public uses for which eminent domain may be exercised and the scope of power, but I was still at a loss in trying to understand. This particular language, when read conjunctively, indicates that a property owner would not know their property was subject to eminent domain because of the confidential nature of the agreement.

**Senator Hardy:**

I see two sections in play: section 13, where "Information obtained by or disclosed to the public agency during the procurement or negotiation of a public-private partnership *may* [emphasis added] be kept confidential . . . ." That is in the procurement and negotiation of the partnership. On line 22 of section 13, ". . . except that the public agency *may* [emphasis added] exempt from release any proprietary information obtained by or disclosed . . . ." In section 14, "The public agency *may* [emphasis added] acquire, condemn or hold real property and related appurtenances under fee title, lease, easement, dedication or license for the public-private partnership." In line 28 of section 14, "The public agency *may* [emphasis added] grant to a private partner a lease, easement . . . ."

I am seeing the word *may* more than I am the word *will*. To get to your other question about the public-private partnership, the concept would obviously be that there is some public benefit and some private opportunity that would be to the common good. Those are the things that we have to figure out if we want to do something like that. If we do, we need to figure out the rules that are appertaining to it so that we allay the concerns, and make sure the state is kept whole and not put at risk, and allow the private entity to be nimble enough to create a project that will be of beneficial use.

**Assemblywoman Neal:**

I understand what you are saying, but I read the *mays* as permissive. If I were going to do a contract, my argument would be that it does not say that I cannot. Because I am allowed, I can structure this so that I can do "X." Even though it does not have "shall," *may* is permissive enough where I can structure a contract so that I could put in language, and the law would not be wrong. No

one could go back to this bill or to this statute and say that I could not because the bill allows both sides to either choose not to or to actually do the action.

I understand that we will have the opportunity to work this out, but I wanted to make the follow-up statement. In real life a person structures a contract for his own benefit so he is not left with all the risk and he gets benefits. That is the point of contracting as a private entity—to get what the contractor needs from the project. If the public will pay for it, that is great.

**Senator Hardy:**

What is interesting about the public-private partnership is that usually it is the private that pays up front, which is the advantage of the private capital being brought in—that you get something done sooner. I do not want to lose sight of the fact that there are two discussions happening. One is the concept of public-private partnerships, and the other is, by the way, that I still want my museum to remain open in Logandale-Overton.

**Chair Kirkpatrick:**

Senator Hardy, when the Committee finishes their questions, can you address section 16, subsection 2(n) regarding tax exemptions and the long-term goal?

**Assemblyman Anderson:**

Who do you see initiating this public-private partnership? Is there a need that needs to be filled by the state? Is there some company that thought this was a good idea and wanted to do it? Is there a need for a specific project or a particular thing we need to fill? Who would be the first person to say, "Let us go ahead and create this private-public partnership?"

**Senator Hardy:**

Thank you, Assemblyman Anderson. It is the need that we have perceived right now to make sure that we have a museum that is able to be kept open to the public, encourage tourism, and other issues important to rural Nevada. That is the need right now. At some point we may or may not feel the need to do anything else. This bill deals with how do we, the Legislature, want to structure public-private partnerships, or do we want to do them at all? This bill is a "put it on the table and discuss it" bill.

**Assemblyman Anderson:**

If think that if you are talking about museums or anything in the cultural department, I do not think you will run into much opposition. It appears that functionally there are many museums that rely on donations and it seems like every museum I have visited displays a long list of contributors. There is a

degree of comfort when talking about those sorts of projects. If I am not mistaken, this bill seems to apply to more than museums.

**Senator Hardy:**

This bill contained many things that were taken out, except the museum.

**Assemblyman Anderson:**

That makes me feel more comfortable.

**Assemblyman Livermore:**

Did I just hear you say that this bill only pertains to museums?

**Senator Hardy:**

This bill is looking at the concept of the museum in Logandale-Overton. That is the intent. If the intent needs to be made in some other way, I would make it. The bottom line is that is the intent of the bill.

**Assemblyman Livermore:**

I appreciate it. You are familiar with the adage "one bad apple spoils the lot." In this case the bad apple is my experience with this. I would recommend that you clarify and specify that. When you look at private-public partnerships they can run the gamut of any imagination.

**Chair Kirkpatrick:**

Assemblyman Livermore, I will help you out with clarification. In section 5 where it defines a project, it does specify, ". . . to a museum which a public agency is authorized to plan, construct, design, finance, improve, equip, operate or maintain . . . ." It does specify a museum as a public agency.

Senator Hardy, there are a lot of unanswered questions. We will hear from Mr. Ricco, but this is not our first discussion on public-private partnerships. I think that we have to set some standards in place, regardless of people putting the money up front. What I see, though, is people being tax exempt on the property for the long term, so there has to be a balance as we do with abatements and exemptions. I have had these fights and been on the wrong side of folks. There has to be a balance so that we ensure that for the long term we are making a good decision. I would also say that we need to start with some initial goals. We keep coming back to the same things and it is hard to get past those when you are exempt from half of the NRS Chapters—332 through 334 and 338—because that is where the public gets their peace. So you take that away, but then you give them exemption on all the property for 55 years—on this one it does not necessarily say how long, it says the lease, the operating agreement would be exempt. There has to be a balance. I have

been on both sides of this discussion. It has to show the public there is transparency. I can add this to the list of bills we have to work on, but I think we are having more and more discussion on figuring out how we can work together; but there has to be a nexus to make sure the public is seeing the benefit because, if not, they will be the first to complain.

If Mr. Ricco is in southern Nevada I would like him to come to the table, please. Since he is not there, we can come back to him.

Is there anyone who would like to testify in support of S.B. 377 (R1)? [There was no one.] Is there anyone who is in opposition to S.B. 377 (R1)?

**Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO:**

We were not available to testify in opposition to this bill when it came before the Senate. Many of the objections we have to this legislation were raised by the members of this Committee.

The project definition in section 5 goes to the fact that the project can be built by the public body. In section 9 it talks about the public body constructing it and financing it. It is basically a public works project that would be turned over to a private entity to run under the definitions outlined in section 9.

Section 11 exempts it from all of the statutes, that is, the "protect the public" statutes, the purchasing statutes, the prevailing wage statutes. We have defined the project as a public works project, but now it is a public works project that is not subject to the laws of public works projects. Section 11, subsection 3, holds that the private partner does not have to be licensed in the State of Nevada. I have discussed this question in other bills where it is not clear whether that private partner would even have to have a business license in the state to enter into the contract for the public-private partnership.

Also, the tax exemptions for the private party are at issue. While they may have an investment in it, they may have no investment up front and they may be given the property to run. We would not object to legislation that clarified that a private party could run a museum that was already constructed, but we oppose the idea of a private party being able to construct a project without any controls, especially when they are going to be able to use public money to build that project.

**Chair Kirkpatrick:**

Are there questions from the Committee? [There were none.]

**Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades District Council 15; representing Southern Nevada Building and Construction Trades Council:**

We are also opposed to this bill for the same reasons stated by Mr. McKenzie. In addition to this, we have concerns about utilization of public-private partnerships, even though everyone is aware of the economic considerations that have to be looked at in this day and time. Even if the provisions of Chapters 332 through 334 and Chapter 338 of NRS are applied to these projects, there are always problems with compliance. The real question is over responsibility for compliance with the laws to protect the interest of the residents of the state.

**Chair Kirkpatrick:**

Are there any questions from the Committee? [There were none.] Is there anyone else who would like to testify in opposition to S.B. 377 (R1)? [There was no one.] Is there anyone who is neutral to S.B. 377 (R1)? [There was no one.] Is there anyone in southern Nevada who would like to testify on S.B. 377 (R1)? [There was no one.]

Senator Hardy, do you have any final comments? [He indicated he did not.] Please tell your people in southern Nevada to submit written testimony for us.

**Senator Hardy:**

Thank you.

**Chair Kirkpatrick:**

The hearing on S.B. 377 (R1) is closed. [Recess called at 9:21 a.m.] [Call to order at 9:30 a.m.] I will open the hearing on Senate Bill 34 (1st Reprint).

**Senate Bill 34 (1st Reprint): Makes various changes regarding the administration of sales and use taxes. (BDR 32-432)**

**Christopher G. Nielsen, Interim Executive Director, Department of Taxation:**

Before you is Senate Bill 34 (R1), a bill from the Department of Taxation. Senate Bill 34 (R1) relates to compliance with the Streamlined Sales and Use Tax Agreement (SSUTA). I plan to give a brief overview and background information, providing more in-depth testimony than I have previously since this is a foreign concept to many people about how we got into SSUTA and which states are involved. Before I go into that, I wanted to advise you that I have submitted a simple amendment to your staff proposing to strike the words "good faith" on page 14, section 12, line 18 and on page 19, section 21, line 34. I believe the Legislative Counsel Bureau (LCB) Legal Division received those amendments. This is a technical amendment consistent with the bill.



Generally speaking, S.B. 34 (R1) is the Department of Taxation's proposed legislation that will keep us in compliance with the SSUTA. I want to set aside the notion that the SSUTA taxes Internet purchases. Every state is prohibited by federal law from taxing purchases solely because they are purchased on the Internet. The Internet does facilitate some of these remote sales but it is no different than someone picking up the telephone and ordering a product using an 800 number. It is just another mechanism for ordering from a vendor who is sometimes located outside the state.

Beginning in 2001, the Department submitted at every regular session of the Legislature similar legislation to what you see before you today. This was done to keep us in compliance with the SSUTA, because the agreement tends to change more frequently than our biennial legislative sessions. This year is no different. I believe the last time the agreement was amended was December 2010.

Our sales and use tax code in Nevada came into existence in the 1950s. It is currently codified in Chapter 372 of the *Nevada Revised Statutes* (NRS) and, except for rate changes, remains largely unchanged since its inception. In 1992 the U.S. Supreme Court issued a landmark opinion called *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). The so-called *Quill* decision interpreted the Commerce Clause of the *U.S. Constitution*, and that case stands for the proposition that a state cannot require an out-of-state retailer or remote seller to collect sales and use tax if that retailer has no physical presence in the state.

Physical presence generally means a brick-and-mortar storefront. This explains why certain nationwide retailers with storefronts in Nevada charge and collect sales tax with respect to their online sales whereas other Internet retailers do not.

Although courts across the country have since issued numerous opinions interpreting the *Quill* decision, the basic rule remains the same; states cannot force or require out-of-state retailers to collect sales tax if no physical presence exists. Congress, however, with their ability to regulate interstate commerce can effectively overturn the *Quill* decision if it chooses to do so. There has been legislation pending before Congress to this effect each of the last several years.

Beginning in 1999, a group of states got together in conjunction with the National Governors Association and the National Conference of State Legislatures and created the SSUTA. Its mission is simple, and I am quoting the following from their language:

The Agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states. It encourages "remote sellers" selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states. It levels the playing field so that local "brick-and-mortar" stores and remote sellers operate under the same rules.

Beginning in 2001, the Nevada Legislature adopted rules encouraging the Department and the Nevada Tax Commission to enter into the SSUTA and adopted some basic definitions required under the agreement. In 2005, Nevada became a member state of the SSUTA. In every session since 2005, the Legislature has added more definitions, sourcing rules, and so forth, so that our state's laws would be in compliance with the agreement. Senate Bill 34 (R1) is the bill prepared for this legislative session.

Most of the rules under the SSUTA are codified here in Nevada under Chapter 360B of NRS and work in conjunction with the original sales tax code contained in Chapter 372 of NRS.

To date, 24 states are members of the SSUTA. However, because Congress has not taken action, participation by remote sellers is voluntary. Many remote sellers participate because it is simpler and cheaper to collect a sales tax and file under the same set of simplified rules than it is to register with each state where its products are shipped.

From a revenue standpoint, the Department of Taxation currently receives approximately \$10 million total with respect to SSUTA sellers. That amount is growing every year; however, the real money is if Congress acts and effectively overturns that Supreme Court decision. There are certain revenue estimates put out by independent groups. They range between \$25 million and \$300 million per biennium if Congress would act. This would not be General Fund money but total sales tax revenue with the bulk being distributed to local governments and the school districts.

Currently before Congress is the Main Street Fairness Act, the latest consideration of whether or not to make the SSUTA mandatory for member states. I cannot tell you what Congress is going to do and whether or not they are going to act this year. As I stated earlier, this type of legislation has been in Congress for several years.

It is imperative that S.B. 34 (R1) become law to keep Nevada in compliance with the SSUTA. We have worked extensively with LCB Legal Division to

compare what is needed under our laws versus what is required in the agreement. An agreement is several hundred pages and this bill has very technical language.

**Chair Kirkpatrick:**

Are the 24 states generating more consistent revenue? Where does Nevada compare with those 24 states? It seems we are jumping through hoops and our increases are not that much.

**Christopher Nielsen:**

I do not know where each state is with respect to revenue. I suspect as a proportion of their total sales tax revenue we are probably very similar. It is a very small component at this point. The hope is that if Congress acts we are ready to receive those moneys.

**Chair Kirkpatrick:**

For the additional states that are not currently part of the Agreement, are they in the surrounding area or in a different region of the country? I am curious to know because I wonder if instead of us jumping through hoops every session if they would do it all at once and apply. It would be faster and they would get the same amount of dollars.

**Christopher Nielsen:**

The states that are currently part of the agreement do not include Texas and California. New York is not a member, but I believe they are considering becoming a member. New Jersey is a member. It is a mishmash. There are politics involved. Some states sell more than they buy. There are other states that purchase more from out of state than they export. I do not know from an economic standpoint where Nevada stands. The bottom line is that as a percentage of total sales tax collected, it is pretty small right now.

**Assemblyman Neal:**

Do you have a specific section of the agreement that deals with the sourcing rules?

**Christopher Nielsen:**

To answer your question directly, we currently have a few sourcing rules, but I think that is what this bill wants to add. My tax manager in Las Vegas can better answer that question.

**Paulina Oliver, Tax Manager, Department of Taxation:**

The section that talks about direct mail is talking about sourcing rules. Typically sourcing rules mean that the tax is due where the item is being delivered, and

the direct mail section distinguishes the direct mail sent to Nevada versus other states. It is providing language that states that if the direct mail is destined to go to other states, it is not going to be taxable in Nevada.

**Assemblywoman Neal:**

I would look under NRS Chapter 360B to determine how those sourcing rules would affect this particular provision. I know you have several in here but this was the only place where I saw it was dealing with a delivery or if the property was received by the purchaser.

**Paulina Oliver:**

There are several sections in NRS Chapter 360B that talk about sourcing rules, not just for direct mail but also when equipment and vehicles are being delivered.

**Assemblyman Ellison:**

Why are we still using Arizona to collect our sales tax so our reporting goes out of state instead of in state? Why are we not being allowed to file over the Internet versus filing manually and sending it in?

**Christopher Nielsen:**

Taxpayers are allowed to file online with the Department of Taxation for their Nevada tax. It is required for the larger taxpayers with a tax liability of more than \$10,000 to pay electronically. A taxpayer's only option is not to fill out the paperwork manually and send it in to Arizona.

The reason it is sent to Arizona is to take advantage of the lockbox operations. The State Board of Examiners recently approved a one-year extension of this contract with the caveat that the Department of Taxation prepare a request for proposal (RFP) as soon as possible. The Department is in the process of preparing the RFP. Historically, the reason it has been sent to Arizona is that originally the only facility that could accommodate the volume and could process the number of tax returns was out of state. There was not a bank in the state that could do that. My understanding was that when the RFP went out if an in-state bank got the bid for the contract they would subcontract to an out-of-state facility. Ultimately, JPMorgan Chase, the current vendor, was selected and they are based in Arizona. Since that contract was first signed, JPMorgan Chase has established branches in Nevada.

**Chair Kirkpatrick:**

Assemblyman Ellison, that legislation for the electronic signing was put into place in 2007. We were told we would save money by doing the direct lockbox. The state was getting the additional interest on their dollars so it was

going to be less. I know that is an issue that we have to take up with the banks because they could have a local office here but chose not to do it locally because their main facility is in Arizona. That has been a priority of the economic development team, to find somebody to come to our state. All of the local government entities do the same thing. With so many state and local government entities it would be an incentive for someone to move to our state to be part of that process.

**Assemblyman Ellison:**

I do not know how our large construction firm does it, but one of the smaller companies sent in the taxes and they sent it back because they forgot to sign it. The checks were in there but they sent it back for a signature.

**Christopher Nielsen:**

I am not familiar with the procedures for the lockbox, but it is no different than if someone walks into the Department of Taxation and tries to file an unsigned tax return. The signature creates a liability. There is an option that has been in place for a few years that you or anyone else can go online and file and pay, no matter the size of the liability.

**Chair Kirkpatrick:**

The purpose of the Nevada Business Portal was to expedite that. The legislative history is that former Senator Bob Beers had that electronic filing bill in 2005 and could not get it passed through the Senate, but it went through smoothly last session.

**Christopher Nielsen:**

To qualify my statement, even though we have the \$10,000 requirement, if a taxpayer comes through the door at the Department of Taxation with a tax return and a check, we are not going to turn him away because he should have filed electronically. We understand that some individuals do not have Internet service or choose not to file electronically. Given the fact that we want to assist taxpayers, we will help them file their returns.

**Chair Kirkpatrick:**

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

**Christopher Nielsen:**

As far as the bill, which is very technical, I will touch on a few sections.

Sections 2 and 26 add new definitions and rules required in the Agreement with respect to direct mail, including advertising and promotional direct mail. It also addresses the sourcing rules with respect to those types of sales. Section 3

addresses the registration of certain sellers. Sections 3, 14, and 23 address the electronic filing requirement under the SSUTA. The filing of returns under the SSUTA is slightly different than for the taxpayers located in Nevada. Under SSUTA we have the Certified Service Providers (CSP). Retailers file their returns with the CSP rather than with each individual state where they do business. The CSP then files a bulk return. For these out-of-state retailers it is much easier to file one set of registration and filing rules than it is to know the rules in many states. That is the principle behind the SSUTA.

Sections 4 and 7 address delivery charges. Some of these changes are currently in regulation because we have worked with LCB Legal Division during the interim via the regulation process.

Sections 13 and 22 address requirements regarding liability of a seller accepting exemption certificates. Exemption certificates are effectively resell certificates. In other words, many businesses will buy products from out of state with the intent of reselling them. If you have one of these certificates, there is no tax liability because their intent is to resell. One of the policies behind SSUTA is to give these sellers some certainty that when they make a sale to somebody and the buyer intends to resell, that the seller is off the hook for collecting taxes. They have done their due diligence. That is a driving force in SSUTA—to give these remote sellers some certainty that if there is an exempt sale, whether it is a resale or a sale to a charitable organization, as long as that buyer represents they have a certificate, they are off the hook. As a practical matter, we do not have the resources to go after a retailer based solely in, for example, New York.

Section 4.5 addresses certain holidays and tax due dates when tax deadlines fall on weekends or holidays. Sections 8 and 17 generally address the term “nexus.” This reiterates that Nevada can collect sales and use tax to the fullest extent the *U.S. Constitution* permits. The *Constitution* as interpreted by the U.S. Supreme Court requires some sort of physical presence or something akin to that. Sections 11 and 20 address certain presumption when individuals have products shipped from outside the state for use in Nevada.

Sections 12 and 21 address the presumption for when tangible personal property is delivered outside the state for use in the state. These are clarification roles that create a bright-line rule that is easier to address or administer and for the public to understand than what we currently have in place. Section 13 addresses the exemption certificates.

This is just an overview of the bill. This is a very technical piece of legislation, and we have worked with LCB Legal Division and with legislative staff to make

sure it comports with what we can do here in Nevada and ensuring it complies with the current version of the SSUTA.

**Assemblywoman Neal:**

On page 5, line 13, it states that a bundled transaction has to meet the definition in paragraph (a) of subsection 6. I am trying to understand how this bundled transaction works when the advertisement and promotional direct mail is a part of it.

**Christopher Nielsen:**

I will have to defer your question regarding direct mail to Ms. Oliver. The bundled transaction rules are currently in place in regulation and they are complicated. They came into being because some transactions are sold with services and products. Some transactions are sold as a bundle, like a basket full of products for one price. These rules are designed for that type of transaction.

**Paulina Oliver:**

Section 6 is talking about advertisement and promotional direct mail. The item that is taxable is not the advertising itself but the actual pamphlets or coupons or flyers. Those are tangible personal property, and that is the item they are talking about that is taxable. Advertisement is not taxable as it is a service, but when it is done through tangible personal property, the tangible personal property is taxable. When talking about bundled transactions, there are times when the sale is made with, for instance, 400 or 4,000 flyers and then there are stuffing, mailing, and postage charges. That would be a bundled transaction because there are some items that are taxable and some that are not—the flyer being taxable and the postage being nontaxable.

**Assemblywoman Neal:**

If there are 4,000 pieces of paper, are we taxing the 4,000 pieces of paper?

**Paulina Oliver:**

Yes, that is the taxable portion.

**Assemblywoman Neal:**

My next question is on page 6, line 4, where it talks about the transactional direct mail. I would like some clarification. If I get a bill in the mail, for example, is it taxed as a transactional piece because it is at the end of the sale?

**Paulina Oliver:**

No, that portion would not be taxed. As in the definition, the portion dealing with billing would not be taxable. It is just the pieces of paper or flyers that are taxable.

**Chair Kirkpatrick:**

For the Committee members, the definition of tangible personal property is personal property which has been seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. That is NRS 372.085.

**Christopher Nielsen:**

I think a counterexample of that might be electricity. You can feel it but it is intangible. Sale of stocks is intangible. If you electronically download software or music, that is considered intangible.

**Assemblywoman Pierce:**

In section 20 it discusses bringing something into the county but not using the merchandise for 30 days, but I wondered why it referenced the county but not the state.

**Christopher Nielsen:**

This was drafted by the LCB Legal Division, but my understanding of the intent was that the county is referenced because counties can have different tax rates. I think it is implicit that it is in the state and if it is here temporarily there is one presumption, if it is here longer than 30 days there is a different presumption that applies. I believe that was the intent of the drafter.

**Assemblywoman Pierce:**

Does that mean that if I bought a fleet of cars out of state and I kept them outside of the county for 30 days, I would not have to pay a sales tax?

**Christopher Nielsen:**

No, that is not what it means. These are presumptions. Any property brought into the state or consumed or used in the state or stored in the state is presumed to be taxable here in Nevada. If it is used outside the county for 30 days and outside the county for the majority of the time for 12 months, you have rebutted the presumption. If it is in Nevada but in different counties over the 30-day period, it is going to be taxable in one of those counties.

**Chair Kirkpatrick:**

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



Thank you, Mr. Nielsen. I understand there is a very large amendment coming for presentation. Are you aware of that?

**Christopher Nielsen:**

Yes, I believe it is going to be presented by the retailers.

**Chair Kirkpatrick:**

What I want to do first is take support on the bill as written with the two technical amendments. We will then revisit the bill after the large amendment is presented.

Those in support of S.B. 34 (R1) please come to the table.

**Carole Vilardo, President, Nevada Taxpayers Association:**

We are in support of S.B. 34 (R1). The reason you have this bill before you is because, as was indicated, we are signatories to the SSUTA. As signatories, we have agreed that our law is going to match the definitions that are established by the SSUTA Governing Board. There are a number of committees. Two major ones are the Business Advisory Council and the State and Local Advisory Council. You also have Compliance Review and Interpretation and others. If our laws do not match the agreement definitions and requirements, we then are found out of compliance. We not only lose our seat on the governing board, but at such time as Congress should enact the Main Street Fairness Act, we would not be eligible for any remote sellers to collect the tax for us. It does not matter that you do not have all the states that impose the sales tax that do not sign this; the important part is that you are in compliance with the agreement and, as such, the remote seller must then collect for you. There are many reasons for this which I will not go into.

We will continue to jump through hoops, I am afraid. The voters turned down Ballot Question No. 3 last year. Because this provision layers each of the components of our sales tax, we cannot make any changes to comply with federal law unless it is approved by the voters. We asked the voters for the authority to make these federal changes, and the voters turned it down. I do not know how to explain it. It was not to increase rates or expand the base, just to keep us in compliance. I think, eventually, we will have another question on the ballot.

I have worked on this since 1989, before the Internet, when we had a Main Street Act in Congress because of phone-in catalog sales. This is not new. It is a collection mechanism. It is not a tax. We will be coming before you consistently because we have to meet the requirements of the 2 percent

portion of the tax. This is very important and maybe someday Congress will enact the SSUTA. Thank you.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anyone else who would like to testify in support of S.B. 34 (R1) as currently presented? [There was no one.] Is there anyone who would like to testify in opposition to the bill as currently written? [There was no one.] Is there anyone who would like to testify who is neutral on the bill? [There was no one.]

At this time I know we have an amendment or conceptual amendment presentation.

**Bryan Wachter, representing Retail Association of Nevada:**

We put together some language distributed as [Exhibit C](#). You should have a packet that shows the intent of what we are trying to accomplish. It includes a presentation and report commissioned from Applied Analysis ([Exhibit D](#)) and a third-party market research report ([Exhibit E](#)) on this topic.

To give an overview of what we are trying to do, the law we are operating under was from 1952. The court case that currently governs portions of this was in 1992. The issue with this is that the Internet was not conceived at this point. There were remote sellers based on category sales, but you could not conceive in 1952 of a way of doing business without being physically located somewhere. There was no idea that you could provide a level of commerce electronically. It is important to note that the way commerce is being conducted is a new way of doing business, and Nevada tax collection regulations have not matched that new way of doing business.

The intent of the amendment is to recognize that the way of doing business has dramatically changed. The way business is conducted now has changed. In reaction to that change, Nevada must update its sales tax collection requirements to reflect the new economic marketplace.

In a few minutes Jeremy Aguero of Applied Analysis will tell you how far Internet commerce has come. As to the amendment, it is conceptual. I have talked to the Department of Taxation, and they have some questions regarding definitions. We apologize if we have made any errors, and we would be happy to come up with the correct language to comply.

It is our intention that the amendment would be placed in section 11 of S.B. 34 (R1). This is because of the other presumptive statements in that section. The first part of the amendment redefines when the seller of tangible

personal property conducts business in the state. We define that as a seller who contracts with a resident of Nevada. It could be a company or individual person who for a commission, or some other form of payment, refers customers to the seller using the Internet or some other form of advertising. We recognize that this presumption may be rebutted by proof that the resident did not engage in any solicitation to Nevada consumers on the seller's behalf.

The reason this is important is an attempt to define the economic marketplace as a place to do business in Nevada without being in Nevada. You reach out to consumers, sell to consumers, deliver to consumers, and issue refunds to consumers. You do everything a normal business would do, but you are connecting in cyberspace instead of your neighborhood. We think the collection mechanism should match that. This is not a new tax. It does not change the tax rate. It does not change the liability of taxes owed, but simply shifts the liability from the consumer to the retailer, the same as any brick-and-mortar operation. It is currently owed as a use tax. People are supposed to go online to the Nevada Department of Taxation website, download the form, fill it out, calculate their tax liability, write a check, and send it in to the Department. No one does that now. The Retail Association of Nevada conducted a poll in February, and I would like to share some of those brief points with you to give you an idea how the public feels on this issue.

As you may know, in some states when you purchase a product from a retailer who operates online, such as Amazon.com, they do not charge state sales tax at the point of purchase. Only companies with a physical in-state presence are required to collect sales tax in the state; however, many customers are unaware that they are still required to pay this tax for products bought from an out-of-state, online retailer. In answer to the poll, 71 percent of respondents said they were not aware that the Sales and Use Tax was owed.

When asked, "If Nevada was considering this, would you favor or oppose an effort to require online businesses to collect the tax?" 60 percent of respondents said they would be in favor of online companies having to collect this tax.

I would like to turn the presentation over to Jeremy Aguero.

**Jeremy Aguero, Principal Analyst, Applied Analysis:**

Our firm, Applied Analysis, was retained by the Retail Association of Nevada to analyze the potential economic and fiscal impacts associated with collecting sales tax for Nevada from Internet retail transactions and specifically taking a close look at the affiliated nexus question.

I will be brief in my comments. Mr. Nielsen's outline was relative to the size of the market. Not only is it the aggregate size of Internet-based sales today, but it is also the pace at which those Internet-based sales are growing—\$155 billion, a number that is at least estimated in years to come to hit \$250 billion worth of transactions nationwide. Some 67 percent of the online population has indicated that they have purchased something online during the last holiday season, a key period for any retail outlet. Some 44 percent of folks indicated shopping online, 10 percent indicated they did so in part as a tax-avoidance strategy. The magnitude and size of this market is substantial. As referred to a moment ago, it is a market that did not readily exist in its present form not long ago. Where traditional sales have been growing between 2 and 4 percent, depending on what data you look at, sales over the Internet have been growing two, three, or four times that amount. Mr. Nielsen specifically looked at this range of values, and we agree with those relative to how much the State of Nevada is losing as a result. Depending on which set of reports you look at, that number could be as low as \$20 million or as high as \$150 million each year.

If we look at what has occurred relative to other states that have attempted to bring online an affiliated nexus or something similar to what is being considered, that is, New York, California, Virginia, Rhode Island, and North Carolina, where in some cases we have data relative to how much revenue they have generated, that number has been between 0.3 and 0.8 percent of existing revenues. If we apply similar assumptions here in Nevada, the estimate result would be roughly 0.5 percent or roughly \$16 million every year. Of course, that does not all go to the state; it would be total collections with the State of Nevada receiving 2 percent in the General Fund and with 2.25 percent to 2.6 percent going into the Distributive School Account.

From an economic standpoint, looking at the fact that there is an unlevel playing field created, and as consumers seek out a place where there are lower costs because they do not bear that tax burden, what is the potential loss associated with employment? If we take a look at the lost sales in their totality, and how much total sales activity is out there and we compare that against job creation in our retail industry, we believe there are as many as 900 jobs potentially lost as a result of this inequity that exists in our economic and fiscal system. Of course, we have to take into account all the other options that make the assumption that all of those sales that are currently occurring out there on the Internet come back in and are captured by brick-and-mortar retailers and that existing Internet retailers do not flee the state or those types of things. If we look at it in terms of what the topside potential impact is, that 900 number is probably a fair estimate. From a fiscal standpoint, that is an impact of roughly \$16 million a year. From an economic impact standpoint, we

estimate at roughly 900 jobs at the top end of the potential spectrum. From a policy standpoint, the only last note that I would offer is that what we are really talking about here is a horizontal equity issue—the idea that two similarly situated retailers could essentially bear the same cost of operation. We would certainly want tax policy that would do that, and, in this case, that certainly does not exist.

Beyond that is a secondary notion that vertical equity should also extend to consumers. That is to say, two consumers should bear the same tax burden for the goods or services that they acquire. In this case, if I have access to the Internet and I have the ability to purchase something over the Internet, and I have the savvy to find out where I am not going to incur that tax liability. I have the ability to do that, whereas someone who does not have that type of access is going to incur a higher aggregate cost or the retailer is going to get some increase in profitability.

With that, three conclusions from our analysis are:

1. Leveling the playing field would have a fiscal impact on the state of roughly \$16 million.
2. The economic impacts could be as high as 900 jobs.
3. From the leveling of the playing field as a matter of tax policy there is an inherent inequity that currently exists in our tax system today, which is what the SSUTA and some laws that other states have been contemplating are specifically trying to eliminate.

**Chair Kirkpatrick:**

Transportation is part of the problem on the Internet. They give free shipping when they should be taxed on the shipping. That is a big portion of the dollar value. I will give you an example. I bought 600 chocolate cowboy hats for an event. The product cost was \$130, but the transportation was nearly \$700 to get the product delivered in three days. That nexus part of it is not being considered because that is where the dollar value is. I have received many calls from associations saying half agree and half do not, so how could we hear the amendment? I promise for all those listening on the Internet that we will have discussions on this issue.

What happens if this law goes into place and, based on the New York appeal, they find that states are enacting the law incorrectly? Would we have to come back and give a refund? Was that ever discussed?

**Bryan Wachter:**

We have not explored that issue. Based on my knowledge, when discussed in court in New York, they have agreed that this language is constitutional.

**Chair Kirkpatrick:**

But there is an appeal process.

**Bryan Wachter:**

There is an appeal process. Every court that has looked at this specific language has agreed with that. We do not know how the appeal is going to go. We anticipate, obviously, that it would go the same way as the lower court. I would be happy to look into it, but I do not have an answer at the moment.

**Chair Kirkpatrick:**

I think that is an important piece because we do not have money to give back for refunds. I would also be curious to know if they have discussed the room tax piece of it, because we do have online room tax in our state. That is a huge part of how we do business for tourism. I realize that you were probably given the task of looking at Amazon, but there are other uses in our state that are direct.

**Bryan Wachter:**

When you go online to a website like Travelocity.com or Expedia.com, there are two ways that they are going to address the issue of tax. It is not a sales tax, but a room tax, which is entirely different. They are either going to charge you an anticipated tax rate and remit that rate to the hotel, or you will pay the tax when you show up at the hotel. Several places in NRS are distinct that the taxable event happens upon delivery, which would be when you arrive at the hotel. The tax is already collected and either remitted by the online retailer or they choose to allow you to pay at the hotel.

**Chair Kirkpatrick:**

Clark County has had the argument for some time, and that is not the conversation that the counties have had on that issue. I will have to get together with the counties on this.

On page 4 of ([Exhibit D](#)), how do we put this in perspective? Whether someone leaves or comes it could be \$16 million one way or as much as \$109 million is what I heard last session. If those companies leave, what is the direct impact? Do we know? We are speculating the \$16 million, so we have to speculate the other side.

**Jeremy Aguero:**

The difference between the first two numbers you referenced is the idea of creating this nexus through affiliates and the broader concept that I think you are referring to from last session where you are opening up the floodgates for all Internet-based activity. We are talking about something a little more narrow.

Our analysis was not specific solely to Amazon, but it was specific solely to retail sales and use tax, the impacts on that specific area of the analysis. Going on to your question of what is potentially lost, from an economic standpoint, it is difficult to tell exactly. From some affiliates, these are online retailers that are using some of the platforms that are not currently subject to or paying Nevada's retail sales and use tax which simply transition over to vehicles that would allow them. Those things are clear.

We believe that some of the existing fulfillment centers, such as Amazon, are employing approximately 200 people, and some media reports indicate that during the holiday season they may staff up to as many as 2000 people. Evidence from other markets indicate that they may very well exit the market altogether. With regard to the outcome of that, and what exactly they would do, they would have to tell you, as opposed to someone like me. From an economic impact you would lose those jobs, and from a fiscal impact you would lose things such as the Modified Business Tax (MBT) and the property taxes. Unfortunately, I do not have specific data relative to what their wages and salaries are or what their property taxes are, but that would have to be deducted from the balance should they choose to leave.

**Bryan Wachter:**

One of the biggest parallels drawn between this language and the State of Texas where this was passed and sent to the governor last week, even though there is a distribution center in Texas, was that previously Texas had sent Amazon a \$250 million retroactive tax bill. The bill said they had not paid taxes since they opened. We are not doing that. We do not believe in retroactivity and think that is a bad way of doing business. Nevada is asking them to collect it from this point forward. These companies do not pay this tax. They collect and remit the tax on behalf of the state. There is not suddenly a new tax liability on the business.

When Mr. Nielsen walked you through the list of states that were not participating, he mentioned New York and Texas. Both states are not participating in the Streamlined process but have enacted or the legislatures have chosen to pass this legislation. It is an interesting parallel that you have states that are choosing not to be a part of the compact but are, instead,

choosing to exercise their own state rights and go after businesses being connected in their states.

**Chair Kirkpatrick:**

On page 17 of your presentation ([Exhibit D](#)) referencing what other states are doing, I worry because our state is a bit unique; however, I do not disagree. I told people not to vote for me but to vote for Question 3 because the streamlined sales tax was so very important. You referenced Rhode Island that had repealed the bill because they did not see any revenue collection. Were there any other states that were similar to that? It does not appear that a lot of states have done it, but there appears that some states have considered it but have not moved forward, similar to the situation in Nevada.

**Jeremy Aguero:**

What our research indicated when we drafted the report is what is included here. These are the ones we knew and where they were at that time. I think it is clear that many states are considering this type of action. As Mr. Wachter indicated, some have taken further action and some have probably delayed that action. To be clear, as states continue to deal with any number of fiscal problems and they deal with the fact that their sales taxes are eroding, this will continue to be an issue. They will get it right sometimes, and they will get it wrong, but they will continue to create some degree of equity between these two retailer types.

**Bryan Wachter:**

I appreciate your bringing up Rhode Island and, as you will see in that paragraph, it is because Amazon discontinued its affiliate program and erased its nexus under this law. Since then the bill passed in Illinois, and there are multiple larger companies in the state that are more than happy and have an open letter to the public that says that if Amazon drops you or an online company drops you as an affiliate, you will get picked up by one of these other retailers. They are happy to pick them up and yet still pay this tax because they believe in a fair playing field for everybody. They felt it was unfair for companies to drop affiliates in order to maintain their tax advantage.

**Chair Kirkpatrick:**

Where is the language that the other states are using? All I have is the intent of the amendment. The language is key when we are considering this legislation. We do not necessarily want to follow Texas or Illinois but we have to formulate to Nevada.

**Bryan Wachter:**

I would be happy to provide that language to the Committee later today.



**Assemblywoman Benitez-Thompson:**

I agree that we need to get the language before people can discuss the legislation.

I want to applaud Mr. Aguero and the Retail Association and the information in ([Exhibit D](#)), but I get suspicious of it because I think that if Nevada tries to go after industry and have industry-specific taxes as a way to build our revenue in this state, we are doing ourselves a disservice. Mr. Aguero talked about the fact it could be potentially \$16 million, but if they leave the state it is nothing. What I would like to see is that conversation about broad-based tax and see you folks participate in that conversation, because I do not think we have seen you at the table to talk about those more broad-based taxes. That way when we talk about taxes we are talking about all of us.

**Bryan Wachter:**

The sales tax is already in place. It is not so much a matter of going after specific industries because it is already liable; even under this new language the state is not levying a new tax. The liability already exists. This shifts that liability from the consumer to the retailer to match what brick-and-mortar stores are already doing. It has been a policy decision from the Legislature to have a sales tax, and this just changes the collection mechanism.

**Assemblywoman Neal:**

I am curious about your argument regarding opening this to the Internet-only retailers. I was reading the *Quill* decision and they went through a very long history of cases and reasoning on why they stayed with the *Bellas Hess* rule, [*National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967)], which was physical presence. What other arguments besides the fiscal will help to circumvent this issue of fairness? I never saw the fiscal argument played out in the cases as a reason for why we should move away from the physical presence. Why do you have that as your strongest argument?

**Bryan Wachter:**

For brick-and-mortar retailers it is law that they have to collect and remit sales tax when a consumer purchases a product. In fact, it is illegal for a company to represent that they are not going to charge you the sales tax or if they collect it, to not remit it. It is a legal responsibility that brick-and-mortar retailers have to collect and remit this tax.

As an example, on a \$300 bike in Clark County you will be charged sales tax of 8.1 percent on the price of the bike. If you choose to purchase the bike from an online retailer who does not have a physical presence in the state, you would not pay the sales tax and could receive free shipping. The fairness for us and

the great fiscal argument is that our companies, the brick-and-mortar retailers here in Nevada, cannot give you that price adjustment and tell you not to pay the tax. An online retailer has that choice because the liability is on the consumer, not the retailer. The majority of Nevada consumers do not fill out the use tax form and that tax goes uncollected. For a retailer, a margin of 3 percent is good. When you are automatically at a disadvantage with the 8.1 percent tax, it is difficult to continue to do business. Retailers and brick-and-mortar stores hire associates and make an investment of time and money in them. We are finding that people will visit a retailer, take up the associate's time in investigating the product, then leave and order the product online because of the cost savings.

**Assemblyman Anderson:**

What has the governing board of the SSUTA been doing on this issue? Have there been discussions on this? I am concerned, since the Nevada Legislature only meets every two years. We should try to think ahead and have as much information as there is available.

**Christopher Nielsen:**

The SSUTA governing board is not doing anything on this issue. Depending on how this is drafted it could create some compliance problems, but without seeing exact language I cannot opine on that. I have spoken with the executive director of the board and he assures me that this is not inconsistent, although as discussed earlier, the streamlined concept is the big, broad-based way to address this issue which is the policy currently in statute and supported by the Governor. This proposal would really only capture sales taking place in Nevada from affiliated remote sellers. That is why the revenue projections are so "backed up" from what they are with the SSUTA.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] Is there anyone who would like to testify in support of this amendment to S.B. 34 (R1)? [There was no one.] Is there anyone who is neutral on this amendment? [There was no one.] Is there anyone who is in opposition to the amendment on S.B. 34 (R1)?

**John Griffin, representing Amazon.com, Zappos.com, and TechAmerica:**

We are here in opposition to the amendment to S.B. 34 (R1), and I would like to frame the question that WalMart and the big box retailers have posed to you today in the form of their amendment, which is, are you willing to jeopardize 1,000 jobs in Fernley at a fulfillment center, Zappos.com headquarters in Las Vegas with 1,200 employees, and countless advertising affiliates which include many small retail businesses located in the state, in order to pass their unconstitutional tax, which is guaranteed by empirical evidence in other states

to raise zero dollars in new tax revenue and drive thousands of high-paying tech jobs and major tech companies out of the state?

I will address some of their arguments in sequence, but I would like to start with some background missing from the presentation. The SSUTA is a federal solution to e-commerce or taxing Internet transactions. Amazon.com fully supports the federal streamlined efforts. If and when SSUTA is ever passed, and Amazon.com is working as diligently and as hard as everyone else to get it passed, it provides a very flat, uniform system to impose sales tax transactions on all Internet sales with a central collection point with revenue then filtering to the states. It is an easy system to administer and it avoids the hodgepodge system that is attempted by this proposed amendment to S.B. 34 (R1).

An end around of the Commerce Clause is what has happened in four states, has been proposed in certain other states, and what is in front of you today. It is attempting to go around the *Quill* decision and the constricts of the *U.S. Constitution* by applying a sales tax to Internet transactions based on some sort of an economic nexus or a physical nexus which is some level of presence from Internet companies or e-commerce companies in a state. In some states you hear the word "affiliate." An affiliate is a small business or a tech company. There is a company in Nevada called Diapers.com which is an affiliate of Amazon.com. They have an advertising affiliate relationship that allows Diapers.com to conduct business with Amazon.com and advertise. If Diapers.com is located in Nevada, this amendment says the location of that affiliate in the State of Nevada gives the state nexus to try and go around the Commerce Clause and apply a sales tax. Amazon is opposing all of the end around attempts on these nexus issues because we feel that it weakens the federal attempt at getting a federal, easy solution. If Texas does something different than Illinois, which is different than Rhode Island, and if 5, 10, or 15 states do that, it is just going to weaken any efforts or any long-term chance at success to get a federal streamlined sales tax. That is why we oppose hodgepodge state efforts like this.

With the presence of Amazon and Zappos in Nevada it is a little different because we do not just have advertising affiliates like Diapers.com. We have a fulfillment center in Yerington, and Amazon owns Zappos, which operates independently but is headquartered in Las Vegas. While it is true that a lot of states have considered this, it is interesting to note how few have actually passed it because of what happened in the states that have passed it. The first state that passed it was New York. It is the only state where Amazon.com or Overstock.com has not terminated those relationships. The only reason for not terminating was that they needed legal standing to file the court case, which is still ongoing.

Rhode Island adopted affiliate nexus language very similar to what was contained in the conceptual amendment put before you today. Upon adoption, Amazon, Overstock, and e-commerce companies terminated all advertising affiliate relationships. Since its adoption, it has generated zero in tax revenue. It drove businesses out of the state, and Rhode Island currently has a bill to repeal the adoption of the affiliate nexus language. North Carolina also adopted the affiliate nexus language. Since its adoption, it has generated zero in tax revenue and driven businesses out of the state. California recently considered the bill. It has not passed and, according to what I have heard, it no longer has legs. Some of the testimony alleged that Nevada was behind the efforts to put this bill forward in California so that Nevada could steal all of their advertising affiliates. When I say "advertising affiliates" it is companies like Diapers.com, both small companies and large companies.

We have received emails from Illinois, where they are considering the bill. There are specialty Internet companies in Illinois that can no longer do business with Amazon and Overstock because of the passage and are looking for another state to do business with. I respectfully take exception to Mr. Wachter's comments that they are fine to locate in states that are willing to collect the tax. That is categorically not true.

The e-commerce companies are leaving Illinois so they can do business with Amazon and Overstock, and they are looking to locate in states that are not doing this. One of these companies, which has 53 employees, has met with the Governor and is looking to relocate in Nevada. I can assure you that if we proceed with this amendment, they will not look in Nevada; they will look in states that are not considering this.

The Office of the Texas Comptroller, which I believe is independently elected, started pursuing Amazon and Overstock when Amazon had a \$53 million capital expenditure on a new fulfillment center. Upon Texas proceeding against Amazon on this issue, they left the fulfillment center and relocated to Arizona.

Nobody is more frustrated than Amazon that the streamlined tax has not been passed. It is an easy solution. It is straightforward. It is not about tax avoidance. It is about easy collection that is constitutional and complies with the *Quill* decision. We are willing as we have been in the past. This is the first session that we are at odds with the Retail Association of Nevada because, historically, we have been arm-in-arm with legislative leaders, the Governor, the Department of Taxation, the Nevada Taxpayers Association, and the Retail Association of Nevada in pushing for the passage of the streamlined tax. This amendment, as you have heard, would bring Nevada out of compliance

with the SSUTA. I would guess it is a deviation and abandonment of our efforts since 1995 to become and maintain our status as a Streamlined state.

Amazon.com is firmly committed to the streamlined tax and the federal solution, and I would remind you that efforts like this do not solve the problem. It is pitched to you as good tax policy, but sometimes good tax policy is not a state solution; it is a federal solution, and that is our position. I hope this body rejects the amendment.

**Assemblywoman Benitez-Thompson:**

There were parts of your testimony that were problematic for me. As much as I do not want to see us focus on any specific industry for revenue, I also do not want to see industry leave the state because they are being asked to help create a community that we all want to live in. It reminds me of the saying "I will gladly pay you Tuesday for a hamburger today." They want to pay the streamlined tax down the road in 10 years or 15 years, but today they want to be in the community, drive on our roads, and send their kids to our schools. If the state decides to take some type of action, they are going to leave. That does not settle well with me. I do not think that is specific to just the folks you represent.

**John Griffin:**

Some of you met Chris Nielsen, the COO and CFO of Zappos.com, who was before the Senate Committee on Revenue yesterday in support of the margins tax. The margins tax would affect their bottom line much more than a sales tax like the one we are talking about. This is not about commitment to the state by Amazon and Zappos. They were here saying, "Tax us more." We appreciate broad-based tax solutions. We have a federal issue here that needs a federal solution. As much as Amazon and Zappos are committed to Nevada, they still want to push for a federal solution. I just do not know how it will all turn out. I do not think they want to leave, but I only know the track record of what other states have done. When other states have passed the law, this is what has happened. It is not about Amazon avoiding taxes because, unlike some others, they have testified in support of a margins tax.

**Chair Kirkpatrick:**

Thank you, Mr. Griffin. I do not know what the answer is at this point. From my perspective, I am worried about legal concerns. We definitely do not have money for a lawsuit. I think that everyone needs to pay their fair share. If that means that constituents have to stop buying on the Internet to help the state get back on track, then that is the way it has to be. I do not know what the answer is, and I will wait to hear from the Committee on the amendment. There has to be a balance somewhere. I think that we have to do something

different. I am not the technology-friendly one in the Committee, so I shop in the stores.

Are there any other questions? [There were none.] Is there anyone else who would like to testify on the proposed amendment for S.B. 34 (R1)? [There was no one.] The hearing is closed on S.B. 34 (R1).

The following bills are potentially ready for work session, and I would like some Committee discussion: Senate Bill 13 (1st Reprint), Senate Bill 32 (1st Reprint), Senate Bill 33 (1st Reprint), Senate Bill 34 (1st Reprint), Senate Bill 79 (1st Reprint), Senate Bill 249 (1st Reprint), Senate Bill 377 (1st Reprint), and Senate Bill 495. After hearing S.B. 249 (R1) today, all of the bills will have been heard by this Committee. I would like your input on Thursday, May 19, when we will be receiving an overview of the margins tax.

I will now reopen the hearing on S.B. 34 (R1) for additional testimony.

**Margaret Borso, Private Citizen, Fernley, Nevada:**

Fernley has many problems and, as you know, we have an Amazon distribution center there. I do not think it is too much to ask any corporation, regardless of who they are, to collect tax we should all be paying. It is one way we can all help the situation. I am definitely in favor of S.B. 34 (R1). I do not want to see Amazon leave. As was pointed out, they do attend our schools, drive on our streets, drink our water, and use all of our facilities. I was not a resident when the distribution center came to Fernley, but I am sure they received some tax advantage for coming to Fernley. It is important that everyone make an effort. I do occasionally shop online and have no problem paying taxes. Hopefully, Amazon would collect the tax and it could go to the agencies it needs to.

**Chair Kirkpatrick:**

I will now close the hearing on S.B. 34 (R1) and open the hearing on Senate Bill 249 (1st Reprint).

**Senate Bill 249 (1st Reprint): Makes various changes relating to administration of taxes on property. (BDR 32-793)**

**Senator David R. Parks, Clark County Senatorial District No. 7:**

This bill is the biennial omnibus assessor's bill which contains clean-up language of Nevada statutes relating to the taxation of real and personal property. I have submitted a proposed conceptual amendment ([Exhibit F](#)) on which I would like to comment. What it provides is some possible language the Committee may wish to consider. It specifically deals with the publishing of the tax rolls in newspapers of general circulation.

The conceptual amendment authorizes, rather than requires, county assessors to decide which method of notification they would prefer: publishing in newspapers or putting the rolls on the county's website. As you are well aware, the tax roll for Clark County is published in one newspaper and is delivered only to those who have residential delivery. It reaches a small fraction of the total number of property owners who might be interested, whereas on a website there would be a greater ability to look at finalized assessed valuation.

I would like to now turn over testimony to our county assessors, who could walk you through the bill.

**Chair Kirkpatrick:**

Are there any questions on the proposed amendment for Senator Parks? [There were none.] Are there any questions on S.B. 249 (R1) for Senator Parks? [There were none.]

**Michele W. Shafe, Assessor, Clark County:**

I will go through the bill section by section and answer any questions.

Section 1 is to clarify that seasonal residents are not eligible for tax exemptions. Sections 2 through 5 and sections 12 through 15 make up the majority of the bill. We are trying to modernize for the future. This would allow the people who have a personal tax exemption to be able to renew electronically. Currently, we mail a card every year and the person must choose how they want to use the exemption and return the card. We have had some, especially veterans, who are more up-to-date technologically, who ask why we mail the card instead of sending an email notification. This would allow the assessor to set up an email program to be used at the request of the exemption holder. They would have the option of receiving the card through the mail or to receive an email notification.

Section 6 would allow for the distribution of common elements in a common-interest community according to the declaration or deed instead of only in equal parts. Currently, the law provides for the division of these common elements only in equal parts. This works in most cases for the standard homeowners' association (HOA); however, in some commercial HOAs as well as hotel condominiums they have it written in their covenants, conditions, and restrictions (CC&Rs) that if you have a large suite or penthouse you would receive more of that share, trying to make it more equitable. This would allow us to go along with what they have in the CC&Rs. If they have nothing in the CC&Rs, we would divide it equally among all of the units.

Section 7 would provide more universal language. Instead of saying that the county assessor certifies that all taxes have been paid on a manufactured home, it would change the language to "tax receiver," as not all counties have the county assessor do this certification. Some counties have the treasurer or controller do the certification of taxes for manufactured homes. This would make the language universal for all counties.

**Assemblyman Ellison:**

Can you define that further? Currently, once manufactured housing is converted from the state it goes back to the counties and the counties put it on the tax roll. Does it go to a statewide entity?

**Michele Shafe:**

When a manufactured home is converted to real property it goes on the real property tax roll. At that point in Clark County, if someone needed to verify that taxes had been paid, they would check with the treasurer, not the assessor.

**Assemblyman Anderson:**

Is the Governmental Services Tax exemption included in this bill? I know the property tax for permanent disabled and combat veterans is included.

**Michele Shafe:**

Yes. It is addressed in sections 12 through 15.

**Assemblyman Stewart:**

What would be the mechanism by which an individual would make the choice between email and U.S. Postal Service mailings? Would you send out a card they would return with their choice selected?

**Michele Shafe:**

Yes. We would have to send out a separate mailing or include the questions on the mailing we currently send out so they could indicate they want to receive notification electronically in the future.

**Assemblywoman Bustamante Adams:**

In section 1, can you explain how seasonal worker is defined?

**Michele Shafe:**

Section 1 clarifies who does and does not receive an exemption. We have some "snowbirds" who come from colder climates down to Las Vegas, and because they receive an exemption in their home state they believe they should also get an exemption in Nevada. Currently the law does not provide for an



exemption unless you are a resident of Nevada. Residency must be proven through a Nevada driver's license or a Nevada identification card. The Department of Motor Vehicles will issue a separate card for seasonal residents so the individual can open a bank account and make other business transactions more easily. The intent was never to give them an exemption when they are not a Nevada resident. This section is to clarify exemption status.

To continue, sections 8 and 9 were deleted in the bill. Section 10 will assist taxpayers by allowing those with business personal property tax bills of \$5,000 or more to be able to make payments in installments. Currently the law allows only tax bills of \$10,000 or more to receive this benefit. We believe with the current economy someone with a \$5,000 tax bill should be able to pay in installments.

**Chair Kirkpatrick:**

You said sections 12 through 15 talked about the Governmental Services Tax?

**Michele Shafe:**

Yes, that is correct.

This language in section 11 would make changes to require the inclusion of the amount of any applicable penalties paid for any partial abatement of taxes when calculating the amount paid to determine the existence and amount of overpayment or deficiency. A few years ago we requested the Legislature change this law so that if someone overpaid their taxes by a dollar or two we could provide a system where they could request a refund, but the refund would not be automatic. It was costing us more to send out these one dollar refunds than it was worth. I checked with the Comptroller's Office and they indicated that to process one claim for refund it costs us \$25 to \$30. There is currently a minimum amount for personal property in the law. It says that if you have a personal property tax bill for the upcoming year of \$16 or less, you do not have to pay it. The taxpayer will receive a notification that they will not be billed. When the cost to collect is more than the amount being collected, it does not make sense to collect. However, if the taxpayer overpaid they would still have six months to request a refund.

Section 15.5 clarifies that the assessor may use technology funding to assist another entity that has operational impact on the assessor's office. For example, the assessor shares information with the county treasurer daily. The county assessor is getting a new system that would help them be more efficient. The system will require some programming on the treasurer's side so the two systems can communicate. We would want to be able to use the

money on things that had a direct impact on us rather than having the money available to other entities.

**Chair Kirkpatrick:**

Would that include allowing the state to be able to access information from your office?

**Michele Shafe:**

Yes, it would.

**Chair Kirkpatrick:**

That makes me feel better about this issue. Is there anything else?

**Michele Shafe:**

This language in section 16 is always confusing because it refers to old legislation. The new language would remove the June 30, 2011, sunset on assessor technology and replace it with a sunset date of June 30, 2013.

In section 17 we wanted to remove language that is obsolete. *Nevada Revised Statutes* (NRS) Chapter 361.170 would be repealed because it relates to business inventory when it was taxed many years ago. Inventory that is warehoused by businesses is not taxed as personal property.

We would also repeal NRS 361.230 because this language is outdated. In 1911 there was a minimum land value set on all property of \$1.25 per acre. We now have statutes that tell us some property, depending on where it is located and what type of property it is, could have a value of zero. Not only is this statute outdated but it presents a contradictory position.

That covers all of the sections and we would be happy to entertain any questions from the Committee.

**Chair Kirkpatrick:**

Are there any questions from the Committee? [There were none.] Do you have anything to add?

**Joshua G. Wilson, Assessor, Washoe County:**

We stand in support of S.B. 249 (R1) and are ready to answer any questions.

**Chair Kirkpatrick:**

Thank you. I think the Committee was asking questions as we went through the presentation.

**Jeff Payson, Appraisal Manager, Assessor's Office, Clark County:**

I am here to answer any technical questions the Committee might have.

**Chair Kirkpatrick:**

Is there anything else from the Committee? [There was nothing.] Is there anyone who would like to testify in support of S.B. 249 (R1) without the proposed amendment?

**Carole Vilardo, President, Nevada Taxpayers Association:**

We are in support of this bill in the first reprint. Concerns we had in the original bill have been addressed.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anyone who would like to testify in opposition to or in a neutral position on this bill? [There was no one.] Those who would like to testify in opposition to the proposed amendment, please come forward.

**Barry Smith, representing Nevada Press Association, Inc.:**

You have heard my arguments before, and I think you are well aware of them. I would add, briefly, that the tax rolls, especially in Washoe County, are a matter of fairness, but there is a great controversy in Washoe County with Incline Village assessments that concern me. There are reasons these are part of public notices. The other thing I draw your attention to is the second part of the proposed amendment regarding deleting the requirement on delinquent tax notices. That is not a taxpayer expense. That is paid by the delinquent taxpayer. I believe the fee is \$7 or \$10.

I would be happy to answer any questions.

**Chair Kirkpatrick:**

Are there any questions from the Committee? [There were none.]

I will try to research your previous testimony on this bill to incorporate your comments. This is the same bill with the exception of the omission of legal documents. [Previous testimony was not located for incorporation.]

Is there anyone else who would like to testify in opposition to the proposed amendment to S.B. 249 (R1)? [There was no one.] Is there anyone who would like to testify in support of the proposed amendment?

**Erin Neff, representing ProgressNow Nevada:**

We think it is good policy to give the flexibility to the county assessor with regard to this matter. There is a good cost savings to the county taxpayers. I know you are all concerned about the state and its budget and revenue, but the counties are also suffering, particularly in Clark County where this has a hefty price tag in the six-figure range. It is good to give them the flexibility. No one is saying they are required to do this, and no one is wrapping up other legal notices. It is a good amendment.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anyone else who would like to testify in support of this amendment? [There was no one.] I am closing the hearing on S.B. 249 (R1).

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

As promised to the Committee, I would like to go over the transaction tax in Assembly Bill 569. Based on testimony we heard, Fiscal and Legal staff have been researching all of the information and working on the answers to many of the questions that have been asked about the transaction tax. Many of the questions for the Committee will be policy decisions. Some of the policy decisions you might want to consider if this bill moves forward are as follows:

- Should all nonprofit organizations under section 501(c)(3) of the Internal Revenue Service (IRS) code be exempt? Sam McMullen, Attorney, Snell & Wilmer, LLP, Las Vegas, provided a tax-exempt status list ([Exhibit G](#)) for our use.
- Are certain services such as babysitting, snow shoveling, pawn shops, payday loans, transportation, and delivery services included or excluded?
- Should the IRS code that says you do not need to file if earnings are less than \$600 be a consideration of whether to exclude?
- Assemblyman Goedhart brought up the question of banking fees, interest on automated teller fees, and financial services and whether to include them or exclude them.
- Should mortgages be included or excluded? Currently the bill states that lease and rent payments are excluded.
- Carole Vilardo of the Nevada Taxpayers Association brought up the question of being able to pay a business and let them deduct an amount for the cost of instituting the new provisions. The bill currently allows \$2,000. Currently we allow 0.25 percent for the Retail Association of Nevada, which they have been doing since 2007.

- Should a six-month period be allowed when the tax is initiated when no penalties or interest would be assessed? That would be a policy issue to consider. We need to work to educate people on any new tax.
- Should there be an exemption for commercial contracts that were previously negotiated? That was a provision brought up based on, for example, getting a retainer and then not meeting the criteria. On which amount would the transaction tax apply? There are provisions in the sales and use tax, but it would be up to the Committee's discretion to determine.
- In section 22, subsection 2(e), a question was raised as to whether the signature requirement prohibited the use of electronic signatures. That was a discussion on whether or not the business portals could be a part of it. Staff advised me that *Nevada Revised Statutes* (NRS) 719.240 already allows the use of electronic signatures.
- In section 23 a question was raised as to whether a taxpayer could appeal the Nevada Tax Commission if he or she disagreed. There are current provisions within NRS 360.245 containing the appeal process. The appeals must be made within 30 days.
- Questions were raised on the transaction tax which would apply to services where the service is bundled into the price of a good that is subject to the sales and use tax. Under the current law the price of the service is exempt from the sales and use tax if it is separately stated on the receipt. For example, if a car repair lists \$100 for parts separate from the labor charge of \$100, then only the \$100 cost of the parts is subject to the sales and use tax. The labor charge would be exempt from the sales and use tax. However, if A.B. 569 passed, the \$100 parts charge would be subject to the sales and use tax, and the \$100 labor charge would be subject to the transaction tax. If the invoice showed a total cost of \$200 including parts and labor, the entire charge would be subject to the sales and use tax under the current law and no portion would be subject to the transaction tax. Therefore, if it is bundled in this fashion you would pay the applicable sales tax (8.1 percent in Clark County). However, if itemized, you would pay 8.1 percent sales tax (in Clark County) for the parts and 1 percent transaction tax (in all counties) for the labor portion.
- Questions were raised as to whether such items as cover charges and admission charges would be subject to the transaction tax. Under section 25, any charges that are subject to the Live Entertainment Tax are exempt from the transaction tax. For example, NASCAR is exempt from the Live Entertainment Tax

when they have two events; however, they would be subject to the transaction tax on all ticket sales.

These are not, by any means, all of the questions asked with regard to A.B. 569. I have been working with the Legislative Counsel Bureau (LCB) Legal and Fiscal Divisions to try and address all of the questions. We received more questions this morning. I met with Ms. Vilardo, who has spent a considerable amount of time on these issues. At this time, I would like Ms. Vilardo to come forward and acknowledge that we are working on these issues.

**Carole Vilardo, President, Nevada Taxpayers Association:**

I would like to acknowledge the work done by this Committee. We have had transaction taxes come before the Legislature in the past. In 1991 we had a hearing and a workshop which was very perfunctory. We had a transaction tax discussion in the 2003 Legislative Session. This is the first time we have delved into what a sales tax on services would be. I would like to thank the Committee for their questions, and especially Assemblywoman Neal for getting me thinking about a lot of issues. I think this has been a good process. I am very pleased. I have some questions I have not yet submitted to the Committee. This is what we need to do and I appreciate the work of the staff and the Committee. Even after all of this discussion, if we were to pass this bill we would come back in two years saying, "We forgot this."

**Chair Kirkpatrick:**

I just realized I intended to get the car rental information on the record. I believe that since they already fall under a different category they would not be subject to the service tax.

**Michael Nakamoto, Deputy Fiscal Analyst:**

The exemption for rental of cars is contained in section 10, subsection 1(c) of the bill which states, "The amount of any rent charged for the rental or lease of any transient lodging or other real or personal property." This refers, in part, to car rentals because it is the rental of personal property. The amount of the rental would not be subject to the tax.

**Chair Kirkpatrick:**

I will continue to work through these questions. If you or any of your constituents have additional questions, please feel free to get them to me. We are trying to get as many of them before the public as possible. The gratuities questions brought up good discussion and the Legal Division is currently looking into those issues.

Are there any questions from the Committee?

**Assemblyman Livermore:**

In thinking about the comments made by the Chair, when you brought up the issue of cover charges, does that include parking fees? For instance, if you purchase a ticket for a sporting event sometimes you purchase a parking ticket at the same time.

**Chair Kirkpatrick:**

I will be happy to get that answer for you. Are there any other questions?

**Assemblywoman Benitez-Thompson:**

On the policy questions you asked us to consider, are we making decisions today or at some point in the future?

**Chair Kirkpatrick:**

We are not making those decisions today. With three weeks left in the session, I would not want to be unprepared with policy. I believe that if we do not get the policy 99 percent right, it begs for a different scenario next session. I prefer to get the policy out of the way as quickly as possible.

**Assemblyman Ellison:**

You heard testimony from commercial retailers from Clark County about the buildings that are vacant there and how the tax might affect them. Has that been researched?

**Chair Kirkpatrick:**

The property management issue is on my list of questions. We keep hearing "revenue neutral" but I do not know how to get there. Our staff told us that we have to have a bridge to change our structure. I do not know how to change the structure without having that bridge. When times are good no one wants to talk about changing structure because it is working. When times are bad no one wants to discuss changing structure because we have to have the revenue to get us over the hump. If anyone has any particular ideas, I am looking at everything. If there comes a time in the next three weeks when we are asked to vote on something, we need to have as many options as are available.

I have tried looking at the ideas presented by Ray Bacon, the Executive Director for the Nevada Manufacturers Association, regarding the resale certificate we use in the sales and use tax; however, I have not gotten very far because it somewhat narrows the base. Going back to 2003 when they kept narrowing the base, it went from a 1 percent to a 3 percent tax. Looking at other states, the tax is 6 percent in some categories and 0.38 percent in other categories. It creates a logistical nightmare to get something like that going.

I am not sure how to fix the pyramiding, Assemblyman Ellison. If you have any ideas from the industry, I would be happy to consider them. In property management, I believe that is a service for which they have been paid.

**Assemblyman Livermore:**

Along the same line of thought, you have people who pay dues to homeowners' associations (HOAs) and the dues provide property management. Is that different?

**Chair Kirkpatrick:**

I do not think that is different. I will discuss it with the Legal Division. The homeowners are paying a property management company to make sure the property is maintained. I believe that is a service for which they are paying.

**Assemblyman Livermore:**

Who would be responsible for the reporting, the HOA or the vendor?

**Chair Kirkpatrick:**

I would be happy to clarify that with the Legal Division, but, in my opinion, it would be the management company that is providing the service.

Are there any other questions? The more discussion we have the more the policy is vetted for the long-term. I think it is a direction that our state is going to have to go.

**Assemblyman Stewart:**

I encourage everyone to stop by Room 3100 today to see the "made in Nevada" products on display.

**Chair Kirkpatrick:**

Is there anyone here who would like to testify in support of A.B. 569?

**Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada:**

We support a balanced solution to the state's budget crisis that provides adequate funding for our state's education and community services. We also support the restructuring of our tax structure that makes it broader, more stable, and more equitable for all Nevadans, especially low-income and working families.

We feel this bill is a very strong bill. As has already been stated, our economy is increasingly more reliant on services. By broadening the sales tax base to include services, it will make it more stable as we move into the future. Also, by allowing the sales tax on goods to decrease over time, we will see benefits



for families who have to pay that 6.5 percent—plus county taxes—on baby formula, diapers, and trips to McDonald's. I think that by doing this we can create a tax system that is more equitable for all, and we can help bring in some revenue to stabilize our state's infrastructure.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Graham Hollister Jr., Private Citizen, Genoa, Nevada:**

I think we do need to get a more balanced tax structure for the State of Nevada. It is ridiculous, as we have all seen, to stick it upon just one or two industries. Secondly, the issue with mining taxes is that they get to strip all of the goods out of our state and, basically give us nothing. We get the shaft. I am very much in favor of making a more equitable tax spread and helping all of the positions of the state.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Nathaniel Phillipps, Private Citizen, Las Vegas, Nevada:**

I am here with a group of students from around the state to ask our legislators to find a solution to the budget shortfalls befalling our state. We students have taken days from our personal time to camp out on the lawn in the cold and rain to try and come up with solutions along with our elected officials so we do not have to carry such a tremendous burden and increase tuition and decrease state services which are so vital during this recession. It would be extremely frustrating to all the students who came here if we do not see a bill like this progress through these chambers. Since the service sector of the Nevada economy is so strong, it seems so common sense and so prudent that this bill would go forward. We are talking about balanced solutions to our budget problems. What can get more balanced than implementing a small tax on services? As students, we have no problem paying \$.50 on our \$50 haircut or paying whatever small amount to fund our education. We want to be part of the solution. We do not want handouts. We need the ability to provide the revenue for our own education and that is why we would like to ask this Committee and this body to push this bill forward. The state needs revenue, and our entire tax structure needs to be redesigned for the current economy. This is part of a balanced solution to bring more money into the state. It is shameful and reprehensible if we do not find a way to bring in more revenue. All of the students here today have sat here for hours so that we could give our testimony in support of this bill.

**Chair Kirkpatrick:**

I did not know that or I would have let you go first, but now you can see what we do all day.

**Nathaniel Phillipps:**

We personally know some of you on this Committee, and we are thankful for the time you are putting in on this hearing. If there are any of you on this Committee who are not listening to what I have to say or maybe disagree with what I have to say, I would encourage you to reconsider and to have an open mind and be receptive to the voices of the students here and push this bill forward. We hope one day to be sitting where you are, and that might not happen if tuition spirals, if our health and human services are gone, and if the things we need most during this economy disappear because this body is unable to come to a consensus. Please move this bill forward or find a solution to balance this budget, and do not let it fall on the shoulders of the most vulnerable—us.

**LeLiana DeLeon, Private Citizen, North Las Vegas, Nevada:**

As Mr. Phillipps said, several of us have made the sacrifice of coming here and sleeping outside to show you all that we are serious about bringing more revenue to our state. I am in favor of bringing a balance to our tax structure. We are in favor of this bill. Those of you who may not be in favor of this, just think of all the sacrifices we are making.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Manal Toppozada, Private Citizen, Sparks, Nevada:**

I teach a course at the University of Nevada, Reno. It is very depressing for us as instructors, especially those of us who are teaching in community health sciences and public health, when we talk to the students about services in Nevada. The subject title should be "Nevada Sucks." I am very passionate about the State of Nevada. As most of you know, Nevada is at the top of the indicators that are bad and at the bottom as far as social community and health indicators, of those that are good. All I ask is that everyone on this Committee stop and think about drawing short-sighted ideological lines in the sand as far as mantras of "no new taxes, no new taxes" and really think about the long-term effects of the decisions you will be making on our children in Nevada.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support? [There was no one.]  
Is there anyone who is neutral to the bill?

**Barry Smith, representing Nevada Press Association, Inc.:**

I think it is probably on your radar, but I know you contemplate advertising as being one of the services that would fall under the transaction tax. I wanted to point out that it would put it in that category where there are a number of services that would be included, such as advertising agency commissions, graphic artists, photographers, and models, which are some of the things that would lead up to the final service of advertising.

**Chair Kirkpatrick:**

Yes, I have that on the list. Thank you.

**Janine Hansen, representing Nevada Eagle Forum:**

I have been coming to this Legislature as a citizen and lobbyist every session since 1971. When I first came here, I was a college student like some of the people here today. Now I drive from Elko every week to be here. The people that I represent are not able to come and camp out on the lawn because they are going to work every day and taking care of their children. They cannot afford the time off from work or the ability to come here and make the same display we have seen the last couple of days. Nevertheless, they are the ones paying the bills and paying the taxes that we are all subject to. They are the ones who do not have a voice here because they are at home doing what they need to do.

I sent you an email, but I will reiterate a little of that for you. The American people today pay between 50 percent to 60 percent of their income in federal, state, and local taxes. That is more than we pay in housing, more than we pay in health care, more than we pay for food or education. Many of those taxes are hidden. My brother had a roofing business. When he gave someone an estimate of \$5,000, he would tell them that \$2,500 of that was for taxes, fees, and licenses. I will say to you that it makes us uncomfortable when you talk about a bridge tax when we are hearing on the other side that they are repealing the sunsets. When I talked to my brother the other day he said there never was a sunset on a tax. That makes us uncomfortable to think that when you tell us it might happen then next time it gets repealed. We understand that these are very difficult economic times. Almost everyone in my family has been unemployed this last year. We also understand that when the level of taxation goes up the level of prosperity goes down because tax dollars do not create jobs—private enterprise creates jobs. There are a lot of individuals in Nevada who cannot come here, and their voices are not heard. They are nervous about bridge taxes which can be repealed next time. The sunset can be repealed on other things. We ask you to take those people into consideration.

**Chair Kirkpatrick:**

I want to give you some comfort because I do hear you. The 1 percent could go up to 10 percent. I have talked about not being able to change that 1 percent for a set period of time because that is fair. We have to see if the tax would work, and we need to put a moratorium on putting that tax in place. Under sections 68 through 78 there is a provision that says it would lower the sales tax so that any additional revenue that came in would go in, and it also says it would buy down the Public Employees' Retirement System of Nevada and fill up the Rainy Day Fund. From my perspective, that is better than going to programs which we are having to cut but to getting back on our feet economically. I believe the bill's sponsor took some of that into consideration.

**Christi Cakiroglu, Private Citizen, Reno, Nevada:**

I am here today as a private citizen. I grew up in Nevada and I strongly support this bill. I think we need to pay more in taxes to cover our services. My mother was a schoolteacher, and what is happening to the education system is shameful. I would rather pay more taxes than see more people laid off. Right now I am working with a lot of people who are close to losing their jobs because of all of the cuts in services. I know people do not like that, especially the anti-tax crowd, but I feel that we need to look past ideological boundaries and look at ways to create revenue for the state. This is a small equitable tax. If people are going to use services, it is a choice to use a property management company, and it is a choice to use an advertising agency. This tax is going to create needed revenue, and I am strongly in support of it.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] We have someone in southern Nevada who would like to speak.

**Michael Randolph, Private Citizen, Las Vegas, Nevada:**

If we are going to start taxing on everything except health care, babysitters, and funeral services, I will be taxed on everything from cradle to grave. I would appreciate it if you put a cap on there of no more than 1 percent. I can only remember back to the days when our sales tax in Nevada was 2.5 percent. I do not remember a lower tax before that, and today it is 8.1 percent in Las Vegas.

As far as HOA assessments, a big portion of the monthly assessment is going into reserves to pay utility bills or other expenses. If you are going to be putting a transaction tax on this, it is the cost of community-owned property. There are certain fees we pay as an HOA, such as to a management company, to a landscaper, and utility bills, but much of the money has to go into reserves. If we have a transaction tax of 1 percent, can we make sure it is on the services and not on the reserves or power bills?

Are we going to be taxing collection fees as a service? If someone does not pay a bill would a percentage of the bill that goes to collection fees be taxed?

Thank you for your time.

**Chair Kirkpatrick:**

I think you bring up some good points and I will work to try to get those answers before our next hearing. I would not think we would want to tax the reserves but I could see the property management being taxed. I believe the collection fees would have to be a policy decision as well. I agree with the 1 percent cap.

**Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association:**

I realize time is short, so I will make this brief. We had discussed exempting transportation. There are issues with applying a services tax onto transportation. Most states, with a few exceptions, do not do it. In Hawaii there is a gross receipts tax, and in New Mexico companies such as United Parcel Service and FedEx have not been able to figure out how to tax the service of package deliveries so they pay a flat fee per month. We also have some issues with pyramiding and regressivity, as far as sometimes things of less value are going to cost more to ship. For instance, a Rolex and a Timex will cost the same amount to ship; however, that shipping cost will be a greater percentage of the cheaper product. If you have something trucked, warehoused, and trucked again, the pyramiding problem comes into play.

Since we are short of time, I will save my comments until a later time. I am available to work with you and your Committee members to help answer any questions on these issues. These are difficult questions. I sent this off to the American Trucking Association, FedEx, and United Parcel Service and have received differing opinions on this issue. I appreciate your patience with me.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] I will close the hearing on A.B. 569. Is there any public comment? [There was none.] The meeting adjourned [at 12:05 p.m.].

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Committee Secretary

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Linda Blevins  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Taxation

**Date:** May 17, 2011

**Time of Meeting:** 8:05 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 34 (R1)	C	Bryan Wachter, Retail Association of Nevada	Proposed Amendment
S.B. 34 (R1)	D	Bryan Wachter, Retail Association of Nevada	"Internet Retailers: Collecting Sales Tax for Nevada"
S.B. 34 (R1)	E	Bryan Wachter, Retail Association of Nevada	"Fallacy of the Internet Sales Tax"
S.B. 249 (R1)	F	Senator David R. Parks	Proposed Amendment
A.B. 569	G	Sam McMullen, Attorney, Snell & Wilmer, LLP, Las Vegas, Nevada (presented by Chair Kirkpatrick)	Tax-exempt Status List