

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

**Seventy-Sixth Session
February 22, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Tuesday, February 22, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblyman Harvey J. Munford, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblywoman Lucy Flores (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Cyndie Carter, Committee Manager
Mary Garcia, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dino DiCianno, Executive Director, Department of Taxation
Marian Henderson, Management Analyst II, Administrative Services
Division, Department of Taxation
LeRoy Goodman, Mayor, City of Fernley
Brandi Jensen, City Attorney, City of Fernley
Joe Mortensen, Chair, Lyon County Board of Commissioners
Mary Walker, representing Lyon County
Jeff Page, County Manager, Lyon County
Dan Newell, City Manager, City of Yerington
Dan Musgrove, Director, Intergovernmental Relations, Office of the
County Manager, Clark County
Carole Vilardo, President, Nevada Taxpayers Association
Lisa Gianoli, representing Washoe County
Jason King, P.E., State Engineer, Division of Water Resources,
State Department of Conservation and Natural Resources
P. Michael Murphy, Clark County Government Affairs, Las Vegas

Chair Kirkpatrick:

[Called the meeting to order. Roll was called.] Today, we have to be on the floor by 10:30 a.m. so we have to be on our way by 10:15 a.m. We cannot be late. We are going to begin with a presentation on the consolidated tax (CTX) distribution. Mr. DiCianno, thank you for doing this for us, and welcome to our Committee.

Dino DiCianno, Executive Director, Department of Taxation:

Here with me today is Marian Henderson, whom I am going to rely on throughout this presentation in the hope that she will correct me if I make a mistake. You should have received a document ([Exhibit C](#)) titled "Consolidated Tax Distribution or, 'Can anyone explain the CTX?'" Those of you listening over the Internet should also be able to access it.

To be very blunt, I am no expert when it comes to the CTX distribution. This is a very complicated process that took months back in 1997 to put together.

Madam Chair, you sent several emails asking whether it was a matter of $x+y=z$. That, unfortunately, is not the case. Each tax has its own unique formula in the distribution process. By the time we get to the end, with respect to dealing with the excess over and above the guaranteed counties, it becomes even more complicated.

I will start on the first slide with a brief history. The CTX was implemented in 1997. It was necessary to be able to combine six different tax types into one monthly distribution. As I mentioned earlier, each tax type has its own distribution formula.

The next slide lists the different components of the CTX. They are the Cigarette Tax, the Liquor Tax, the Governmental Services Tax (GST), the Real Property Transfer Tax (RPTT), the Basic City County Relief Tax (BCCRT), and the Supplemental City County Relief Tax (SCCRT).

Chair Kirkpatrick:

If anyone in the Committee has any questions, it is productive to go ahead and ask. So the CTX is a piece of nearly every tax we have, is that correct?

Dino DiCianno:

These are the taxes that have a component for local distribution in addition to the State General Fund distribution.

Assemblyman Ellison:

When was the last time the CTX distribution was looked at? Has that been done since it was implemented? Has it always been calculated by the same formula?

Chair Kirkpatrick:

Mr. Ellison, maybe we should get through the structure of it first.

Assemblyman Ellison:

I would like to know, before we really get started, whether this has ever been looked at or it is still the same as the day it was implemented.

Dino DiCianno:

I would be more than happy to respond. The last time there was a study done was in 1997, when this process was put together. A bill has been introduced to have a subcommittee of the Legislative Commission review this. The impetus for this is that the economic situation for the state and local governments now is different from what it was in 1997. Maybe it is time to have a review, but that is not my call to make.

Chair Kirkpatrick:

Did we not have a couple of interim studies on this in the early 2000s to go back and look at it? I think there will be a lot of CTX bills coming through this session, and that is why we are going to go through the structure first.

Assemblywoman Pierce:

The BCCRT and the SCCRT are collected as part of the Sales Tax, is that right? [Mr. DiCianno indicated it was.] And the Governmental Services Tax is the old Motor Vehicle Privilege Tax?

Dino DiCianno:

Yes, it is. I am not going to spend a lot of time on the next few slides. I will simply note there are specific statutes concerning how to distribute the Cigarette Tax; the Liquor Tax; the GST; the RPTT; the BCCRT; and the SCCRT, which is part of the Sales Tax. There are specific statutes and specific formulas as to how that is done. It can be based on the assessed value, on the point of origin, or on the population of the particular area where the tax is being collected.

In the slides, there is a sample SCCRT calculation ([Exhibit C](#), page 8). I am not going to go through the entire formula this morning, but there are a couple of important things that need to be pointed out. When we talk about the CTX distribution, which is the calculation of the tax distribution to the counties, there are a number of guaranteed counties. There was a policy determination that we are one state. No one county should suffer because the tax collected in one county is greater than it is in another.

There are nine specific guaranteed counties: Douglas, Esmeralda, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, and White Pine Counties. Regardless of the amount we collect, those counties are guaranteed that amount based on statute and the Consumer Price Index calculation. By the time we get done with all the distributions associated with those taxes, we end up with the allocation to all counties, not just the guaranteed counties.

Let us talk about the distinction between the first-tier and second-tier distribution. In a nutshell, the first tier is basically the county. That is the county bucket, so to speak, that the revenues flow into. I am going to pass over the distribution amounts, but you can read that.

The second-tier distribution is where it starts to get more complicated. Each county's second tier is a further breakdown of the first tier. The second tier goes to local governments within the county, such as cities, towns, general improvement districts (GID)—all the entities with the ability to have a tax rate.

There will be a lot of discussion about this. There is a bill here today dealing with what base allocations are, how they came about, and why they are what they are. It is formula driven and was established at the time the consolidated tax distribution was put in place in 1997. There are adjustments, but the reallocation of an entire base does not exist in current statute, nor do I have the authority to change the base calculation of an entity. Do you really want me to have that ability? No, you do not, and neither do I.

The next slide ([Exhibit C](#), page 13) illustrates a sample base distribution. I will not go through all the machinations associated with that, but I just want to indicate there are specific formulas. We would be more than happy to provide those formulas to this Committee for review at each step of the way.

Chair Kirkpatrick:

When the adjustments are made, they are typically between the counties and the local entities themselves, is that right? [Mr. DiCianno agreed.] And they can work together to make their adjustments?

Dino DiCianno:

That is correct. It is important to understand that the pie is the pie. It is only so big, and it has to be distributed based on the overall amount of collection. There is nothing outside that pie we can bring in to make the pie larger.

Chair Kirkpatrick:

I tried to read all this, because I have a whole city that believes the whole adjustment should be done. I thought, when I read this, that there was a period when people could petition the Department of Taxation if they felt their allocation was unjust.

Dino DiCianno:

At one time, when a new town became a city, a town was incorporated, or a larger district was formed, there was that possibility. There was a statute speaking specifically to that.

Chair Kirkpatrick:

It had to be done within that time frame, is that correct?

Dino DiCianno:

That is my understanding.

Assemblywoman Pierce:

The only part of this where the nine counties have a guarantee is the Supplemental City County Relief Tax (SCCRT), is that correct?

Dino DiCianno:

That is correct. Next is a discussion about the excess distribution. I would like to have Marian explain where this excess comes from and how it relates to the formula.

**Marian Henderson, Management Analyst II, Administrative Services Division,
Department of Taxation:**

Where we get the most questions about the CTX is on the excess distribution. That is recalculated once at the beginning of every fiscal year. The amount of excess distribution available is the total amount available to that particular county less the base amount that has been distributed. If there is anything left over, that is the excess amount. It is distributed based on a formula that combines the five-year moving average of the change in population and assessed valuation for the populated entities. For the special districts that have no population associated with them, it is only the five-year moving average of the change in assessed valuation. We multiply that by the amount of excess to calculate how much each entity will receive of the excess distribution.

Assemblywoman Neal:

If the excess is based on those two criteria, from all the county presentations we have heard, the assessed valuation has dropped and the population has suffered. Has there been any excess? If so, in which years was there an excess?

Marian Henderson:

That is an excellent question. For last year, fiscal year (FY) 2010, there was very little excess to distribute in most of the counties. Again, this is county specific. The mining counties have an excess to distribute because they have collected more than their base amount. Some of the larger counties, Washoe and Clark Counties for instance, had no excess distribution in FY 2010. So far, in FY 2011, they have had no excess distribution. We are doing projections right now for FY 2012 to determine what these formulas will be. We are estimating that Clark County, especially, will not have any excess distribution because of the drop in the total amount of revenues. It is not based on the formula for excess distribution; there is just no excess available.

Assemblywoman Neal:

So, if the mining counties have excess, is there going to be an adjustment in this climate? What I did not hear was that there were specific factors in why there would be an adjustment. A recession is obviously a reason, but is that not a factor? There are counties that are specifically hurting. They cannot adjust their base, and they have nowhere to go. Even if they attempt to

consolidate or flip-flop services or do whatever they need to do, they do not have any money.

Marian Henderson:

The only adjustment that can really be made, according to current statute, is whether or not a county has its excess distributed on "1 plus" or no "1 plus," which is an adjustment to the formula. The statute dictates when the "1 plus" or the no "1 plus" formula may be used.

Chair Kirkpatrick:

Were any counties complaining when we had an excess? Did they want to give it back? I am just curious, because that is part of the discussion. Everybody is in a situation now, but I am wondering if, when times were good, they thought they were getting too much.

Marian Henderson:

Many entities are complaining that there is a fairness issue and they are not receiving the amount they deserve. Whether they are flush with money or, in the present case, they are not even meeting their base distribution, fairness issues always come up.

Chair Kirkpatrick:

Also, we have amended the excess portion of this since 1997. At least on the excess part, we have gone back and revisited that and made some minor changes; is that correct?

Marian Henderson:

Yes, but only to the "1 plus" and the no "1 plus." Those few sections have been added to the statute because there were counties where the way the formula worked made it mathematically impossible to distribute the excess. Really, they have been correcting the statutes to accommodate a situation where we could not mathematically distribute the excess.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Stewart:

How were those nine guaranteed counties selected?

Dino DiCianno:

To be honest, I will have to go back and research that.

Assemblyman Stewart:

If they are guaranteed, then, in some cases, the other counties are being shorted, but if there is a surplus, then the other counties get more than the guaranteed counties; is that how that works?

Dino DiCianno:

That is correct.

Chair Kirkpatrick:

I believe the reason those counties were guaranteed is that they could not generate that much revenue on their own.

Dino DiCianno:

That is part of it.

Chair Kirkpatrick:

And I believe that part probably has never been studied.

Assemblyman Munford:

Would the formula change or be adjusted on the basis of population growth? Population growth means a need for more services, so the need would be much greater.

Dino DiCianno:

That would be a logical conclusion.

Assemblywoman Neal:

We have been inundated with information. It appears that, in 1997, we created a base calculation. Now we are far beyond ten years from that, and we need to try to figure out how this works in a recession. When the discussion was had in 1997—we have had a series of ups and downs in this state—was a recession type of calculation discussed? What do we do when the population stalemates? What do we do when the assessed value is not a real value we can even count on? Was that discussed? This is not a new issue.

Dino DiCianno:

I believe you are correct. At that time, and from 1997 to 2007, we had unprecedented growth. There were no issues of declining assessed values or a decrease in population. Those are recent occurrences. Should there be a discussion associated with that? Absolutely.

Assemblywoman Neal:

What was the economic climate in 2003? We had an issue then where we were not doing very well or performing well in those areas. We had an issue with how much Property Tax revenue, Sales Tax revenue, and other revenues we were bringing in. Was that not significant?

Dino DiCianno:

In 2003, the issue of revenue was more related to the State General Fund. It had nothing to do with the counties. However, at that time, assessed values and population were not dropping. They were growing.

Chair Kirkpatrick:

You make a good point, because this is the local governments' portion that goes to their general fund. For most of them, as we have seen in the Assembly Committee on Government Affairs, this is a large part of their general fund.

The structure is what it is. It is like Property Tax. My husband was not complaining when we capped Property Tax increases, but now he is complaining that it is still going up. I tell him, "Hey, let us go back and collect all the money you had then, and you would be right where you are." Unfortunately for everyone involved, if the structure works during the good times, then it will offset itself during the bad times.

I represent the Cities of Las Vegas and North Las Vegas and part of unincorporated Clark County, so I am trying to understand who I would take from to make someone else whole. That is basically how you are telling me that structure works. Within that county, it is divided up; is that correct? [Mr. DiCianno agreed.] I would almost be telling my constituents on one side of Decatur Boulevard that the people on the other side of Decatur Boulevard are now getting less; you now lose this service because I have to give it to them. I do not know how that is supposed to work.

We really need to focus on the structure—when it works and when it does not work. I believe there are probably five CTX distribution studies coming up, but looking at each and every one of them, everyone just wants more money. If we are going to study something, are there particular aspects that would be more helpful for the future?

Thinking of all the new Committee members, we need to have institutional knowledge. We have to have some minutes on the record because it was very hard to go back and see how this works. Do you have any recommendations

for specifics or, if we were going to study this particular topic, things we could look at outside of a base allocation?

Dino DiCianno:

I am trying to avoid sticking my neck out too far. I think Assemblywoman Neal is correct. There are issues in dealing with the distribution that have to do with declining assessed values. Those have a direct impact on local governments. The other issue is declining population, although the problem of declining population is nowhere near as great an issue as the decline in assessed values and the formulas for distribution to local governments.

There should also be a discussion as to how to now calculate the base depending on what happens, as when a town becomes a city or a town incorporates. The formulas should also be looked at in view of why a tax is being collected and where it is supposed to go.

Figuring those things out is not an easy thing to do. It took 18 months the first time. I am not sure how long it is going to take this time. There are all kinds of entities vying for certain things. Whether the entity is a county, a city, or a town, those things all factor in.

Assemblywoman Pierce:

This discussion of assessed value is looking at the global picture. No part of the Property Tax is included in the CTX; is that right?

Dino DiCianno:

That is correct. It is just a variable used in the formula to assist in calculating the distribution.

Assemblywoman Pierce:

Part of the calculation is based on population so, as towns grew, they received more CTX. There is no calculation in here that addresses how, when we go into a recession, people need more services. It does not adjust for a recession.

Assemblyman Ellison:

Page 8 of 17 ([Exhibit C](#)) shows the guaranteed counties, the point of origin, and the distribution. Out of the \$53,200,061.23 that was collected, \$38,872,263.74 goes to Clark County; is that correct? This is up to date as of 2011; is that correct? [Mr. DiCianno verified that.] If this were based on population and collection, it seems this should be close.

Chair Kirkpatrick?

Are there any other questions? [There was no response.]

Dino DiCianno:

That concludes our presentation. We appreciate the opportunity.

Chair Kirkpatrick:

Can you go through your process when a local entity comes to you and says it wants to petition to change things? Do you have a process for how and what they can ask and what you can and cannot do?

Marian Henderson:

Are you asking when there is a fairness issue and a local government wants an adjustment? There are a few things in statute we can look at. In Chapter 354 of *Nevada Revised Statutes* (NRS), there is a provision for local governments to complete an interlocal agreement where two or more local governments in a county can get together and agree to change their distribution. That is going on right now in White Pine County. The local governments just came to an agreement for the hospital to get more money.

There is also a provision for when a new local government is created and takes over services another local government has been providing. The statute specifically mentions police and fire services. For instance, if a city is incorporated and takes over services the county has been providing, we can do a calculation to shift the money from the county to that particular city.

Chair Kirkpatrick:

Can you clarify what you mean by taking them over? There are some incorporation bills coming this session from the Senate. Is taking them over creating one's own police department, or is it doing a memorandum of understanding (MOU) and sharing the services? If I am already getting the service, the city did not do anything extra for me.

Marian Henderson:

It is my understanding that the new entity is creating its own police department or fire department. Those are the main two, but there are a number of other services to which this would apply, such as parks, roads, and animal control, if the new entity creates its own department. Otherwise, there would be no need to redistribute taxes because the city and county would simply come to an agreement about what the services were worth, and one could reimburse the other.

Chair Kirkpatrick:

Let us say, hypothetically, we talk about combining services between counties and cities within this 120-day legislative session. I have noticed that some of

a county's functions are duplicates of what the cities do. Does that change the CTX distribution or does it stay whole?

Marian Henderson:

Can you clarify what you mean by combining services?

Chair Kirkpatrick:

Let us say City A provides judicial functions. It has a municipal court. County A provides a justice court, a district court, and others. If we combine those services and put them all under one umbrella, and if it involves a service for which the city receives CTX, would that change the CTX formula, or would the structure stay in place? I am just looking for more efficient directions in which we might go. In light of some of the incorporation bills coming from the Senate, what does it really mean to take over services or create one's own services?

Marian Henderson:

I really do not know. That is backwards from the way we usually think about this. We look at cities taking over services. I do not think that is specifically addressed in NRS 360.680 and 360.690, which deal with the CTX distribution. However, it may be addressed in Chapter 354 of NRS, which deals more with local governments.

Assemblywoman Pierce:

I always thought the CTX had something to do with the tax shift of 1981. [Ms. Henderson shook her head in disagreement.] It did not. So, before 1997, all of the counties kept the taxes generated in their county?

Marian Henderson:

No, the taxes making up the CTX actually were distributed individually, so there were six different distributions. The formulas for distributing them were either the same as or very similar to what we have now. We simply combined the different distributions into one. For instance, the rules about the Supplemental City County Relief Tax (SCCRT) and the guaranteed counties had been in place since the 1980–1981 tax shift. The SCCRT was supposed to somehow mimic the distribution of Property Tax.

Chair Kirkpatrick:

Are there any other questions? Mr. DiCianno, the members are so quiet, but we have been hearing about the CTX for three weeks. Thank you. I appreciate you giving us a brief overview.

If you do not mind, we are going to change the agenda a bit and hear Assembly Bill 47 first, since the subject is fresh in our minds.

Assembly Bill 47: Requires a base adjustment in the formula for the allocation of certain consolidated tax revenue and an interim legislative study of the current allocation formula. (BDR S-315)

LeRoy Goodman, Mayor, City of Fernley:

We requested this bill be brought before the Legislature for consideration. The bill deals with the CTX distribution base amount in the City of Fernley. We are not talking about the excess distribution.

I want to give you a brief snapshot. Fernley is a city of almost 19,000 people. The city was incorporated in 2001 as a general law city under Chapter 266 of *Nevada Revised Statutes* (NRS). We are the only entity that has come into being by changing from an unincorporated town to an incorporated city since the 1997 consolidated tax study and tax shift.

As Ms. Henderson and Mr. DiCianno pointed out, there is no provision in statute for an adjustment to be made to the CTX base when a town becomes a city. There is a provision, when a town disincorporates, for the county commissioners to determine the CTX base, but there is no provision for the incorporation of a city. When the tax shift was made in 1997, the City of Fernley did not exist. We are a new entity, and this is where the problem lies.

Some of the services the City of Fernley took over are building permits, plan reviews, and the road department. At the time, Lyon County had a 7.777-cent ad valorem road tax, and the amount of money that came from Fernley was put back into the town of Fernley for roads. The county administered that. In 2003, county officials decided they were not going to do that anymore, so they kept that 7.777 cents for the county's general fund ad valorem.

We had to hire a full-fledged city attorney and staff, city clerk, treasurer, municipal court judge and staff. Those are all statutory officers required by *Nevada Revised Statutes* (NRS). For the maintenance and construction of parks, we continued a small agreement with Lyon County for \$60,000 a year, but in effect, we took over total control of the parks. Fernley does have eight parks within the city limits. Police services had been provided through contract with the county; it was agreed the chief of police of Fernley would be the sheriff. We hired a city engineer and staff because we now had to do our

own plan checks, inspections, and so on. Departments had to be created for planning, zoning compliance, codes, animal control, and vector control.

The fire district is a separate entity in Lyon County. It is, under Chapter 473 of NRS, totally separate. In fact, after the city incorporated, but before it took over in the 2001 Legislative Session, Speaker of the Assembly Joe Dini had to introduce a special bill to ensure that the North Lyon County Fire Protection District remained whole. Otherwise, according to Chapter 266 of NRS, the City of Fernley would have been taking over that fire district. It would have been a very small entity with virtually no operating funds. An agreement was made, through the legislative body, that the North Lyon County Fire Protection District would continue to operate and receive its own tax fund. It has its own board of directors who make their own decisions. The fire district is totally independent from the City of Fernley.

The City of Fernley also has a swimming pool district that was set up when Fernley was a town. This is a General Improvement District under NRS 318, and it has a 20-cent tax rate approved by the voters of Fernley. The City of Fernley has nothing to do with that swimming pool district. It is totally separate. These are services we currently provide. We have had several meetings with the Department of Taxation to resolve what we feel is a problem with the base adjustment.

Chair Kirkpatrick:

What is the Department supposed to do? I understood you could try to work this out with your county. I am not sure we want Mr. DiCianno or anybody else to have the ability to go in and change things. What were you specifically looking for?

LeRoy Goodman:

We were looking to see if an adjustment could be made to the base, and that is why we asked the Department of Taxation. They said they were not able to adjust the base. We would have to go to the Legislature or to court for a base adjustment.

Chair Kirkpatrick:

Is there no opportunity to work within your county to do this?

LeRoy Goodman:

No, that is a different issue. We are working with the county. There are opportunities within NRS for interlocal agreements. Matters such as the municipal and justice courts could be worked out through an agreement between the county and the city.

Chair Kirkpatrick:

If you change the base, does that affect my residents in Clark County? That would be for the whole state, correct?

LeRoy Goodman:

Yes, very slightly.

Chair Kirkpatrick:

Let us be clear, because I have to go home and tell my constituents that I cut them short on a service for the City of Fernley. I am not sure they will understand that. When you look at the numbers, my constituents actually produce a large part of that revenue.

LeRoy Goodman:

That is correct; that is what we are talking about. We have met with the Department of Taxation to see if this could be clarified in person or telephonically. They came to the conclusion this could not happen. This is why we had Assembly Bill 47 drafted, and that is why we are here today.

For some, the question is why Fernley should receive a base adjustment. It would give us a more equitable distribution of the pie. We know the pie does not increase; it is decreasing. The distribution of the consolidated tax to the entities changes every year anyway. By the middle of March, the Department of Taxation has to have those numbers to the local governments so they can continue preparation of their budgets.

The biggest problem we have is that the City of Fernley did not exist in 1997. It was an unincorporated town, which is totally different under *Nevada Revised Statutes* (NRS). It became incorporated by a vote of the people in 2001, under Chapter 266 of NRS. A group of five residents of Fernley, none of whom were on the town board at the time, put together a petition and went through the complete process. They submitted it to the county commissioners. It then went before a vote of the people—where the people of Fernley approved incorporation as a city—and then on to the Committee on Local Government Finance.

On page 15 of our handout ([Exhibit D](#)), you will see the per capita and per assessed valuation figures. The chart shows the City of Fernley and various cities and unincorporated towns in Nevada. Fernley is on the chart, but it is at the bottom of the list when it comes to the amounts we get per capita and per assessed valuation. This shows the figures for the current fiscal year (FY) 2010–11.

We receive an actual amount of \$145,600. The City of Winnemucca, with a population less than half that of Fernley and with an assessed valuation of one-third the City of Fernley, receives \$2.9 million in consolidated tax (CTX) distribution. Also in that handout, we have other data on special districts that receive much more money than Fernley, and we are a full-service city. With our contract with the Lyon County Sheriff's Department, we provide everything we need to have. We would obviously not be able to have our own police force because we simply would not have enough money.

Twelve days ago, in the Assembly Committee on Government Affairs, I mentioned we were very much a blue-collar city. We have the Crossroads Commerce Center, with companies like Amazon.com, Inc.; Trex Company, Inc.; and the Sherwin-Williams Company. We are only 15 miles from another big industrial complex, the Tahoe-Reno Industrial Center.

On page 21, I would draw your attention to the FY 1999-2000 consolidated tax distribution. Fernley received \$91,454. On the next page you can see Fernley received \$100,000 in FY 2000-01. You can see the figures for other entities too.

Look, on the next page ([Exhibit D](#), page 25), at Elko County and the four incorporated cities in that county and the three unincorporated towns. Their numbers are distinctly spread apart. If you look back at the City of Fernley on the previous page, this was when we were an unincorporated town. On page 34 of the presentation ([Exhibit D](#)) you can see under, Lyon County, the base amounts for each year from FY 1998–99 through FY 2008–09. You will see the numbers for Lyon County, the incorporated City of Yerington, and the unincorporated town of Fernley.

These are printouts from the Department of Taxation and not ones we made up. If you notice, Fernley never changes. We never go up into the incorporated city status. We simply stay as an unincorporated town. That is where we are today. Fernley, according to the format of the report put out by the Department of Taxation, is still considered an unincorporated town.

You can see, on the following pages, the various tax distributions. Fernley's population has more than doubled since it incorporated. In 2001, we had about 7,000 people. Now, we have almost 19,000. Of course, that will change with the new figures the Governor will confirm by the end of this month.

This is an example of why we feel the base amount for the City of Fernley needs to be adjusted. The City of Fernley has never been recognized in this as a city providing services. I agree with what has been said by the Committee

today. It is best to look at consolidating services, doing things together with the county. We are on the county's agenda for March 3 to ask the county for some of the consolidated tax through the proper statute per an interlocal agreement such as the county has with the City of Yerington. The City of Fernley is now asking for that also.

The City of Fernley is 35 percent of the population of Lyon County. It is also 35 percent of the assessed valuation of Lyon County. In the bill, we are asking for a base adjustment to \$5 million. You may ask how we arrived at that figure. There are two ways. If you take the population of the City of Fernley and divide it into the population of Nevada, it comes to just short of 0.6 percent. This year there are \$951 million in the pot. If you take 0.6 percent of \$951 million, that comes out to \$5.4 million. If you do the same with the assessed valuation, it comes out virtually the same. If you look at Lyon County's distribution, the figure for the county itself is \$13 million. If you take 35 percent of that, you come up with \$4.5 million. We just split the difference between \$4.5 million and \$5.4 million and came up with \$5 million, which seemed to be a fair and equitable adjustment to the base. That is what we feel the City of Fernley, with 127 miles of paved streets, 164 square miles of territory, and a population of almost 19,000, deserves. We certainly deserve more than the \$145,000 we are receiving this year.

We are talking about possibly taking over some services from the county. We have talked to them specifically about taking over our cemetery and library to reduce that load on the county. The main reason is we are 50 miles from the county seat. Servicing the City of Fernley with such things as the cemetery, the library, and the senior center becomes onerous for the county simply because of the distance, especially in bad weather.

In 2001, when the City of Fernley was created by a vote of the people and through the proper statutory channels, the consolidated tax (CTX) distribution formula statewide should have been adjusted to recognize the new entity of the City of Fernley.

Before I finish, let me introduce everybody. On my right is our City Manager, Greg Evangelatos. On my left is Mrs. Brandi Jensen, our City Attorney. Mendy Elliott, from Nevada Business Strategies, is our consultant on this matter. In the audience, we also have Mel Drown, our City Finance Officer.

Chair Kirkpatrick:

Thank you, and welcome.

Assemblywoman Neal:

I listened to everything you said. This is an interesting predicament because everyone is in a position where they do not have a lot of money or do not feel they can replace money they give away. You are asking for \$5 million, yet you stated you are looking at taking on additional services like the cemetery. Does that create the ability to levy some sort of tax on it? What are we doing?

LeRoy Goodman:

Levy a tax on cemeteries?

Assemblywoman Neal:

I am trying to understand. Chapter 269 of *Nevada Revised Statutes* (NRS) says you can levy taxes for common services provided to contiguous towns. I assumed, when you mentioned you were having discussions about services and which ones you can take on, that the purpose was to be able to levy a tax to bring revenue back to yourselves. I do not understand what you are doing. What is the calculation, and what are you going to get by taking on these services? Could you clear that up for me?

LeRoy Goodman:

I will try. By taking on services, we take pressure off Lyon County, since the county seat is 50 miles away. I believe it allows them to continue services for which they are having trouble finding money. Lyon County, like every county and city in the state, is strapped for money. We feel an adjustment to the base is needed, since, for the last ten years, there have been none other than the excess distribution. That does not amount to a whole lot when you get 6 percent of \$140,000. Six percent of \$5 million is a nice amount.

We need some real road work in Fernley, and we do not have any road money. The very little bit we get from the Gasoline Tax, because of the way that formula works, is not enough to do anything. We receive nothing from Lyon County, even though we pay 63 cents in ad valorem rate to the county. The City of Fernley's rate is 35 cents for the city. The ad valorem overlaps, and none of it comes back to the City of Fernley for roads. We take care of our own roads and, quite frankly, we are not able to do that at this point, nor have we ever been.

We feel that for the last ten years other governments—other entities in Nevada—have actually been using some of Fernley's money. There should have been an adjustment made in 2001.

Chair Kirkpatrick:

Believe me, North Las Vegas has a better story than anybody. I do not want to get into . . . Mr. Anderson and then Ms. Pierce.

Assemblyman Anderson:

I am looking at the fiscal note for Assembly Bill 47 submitted by the Department of Taxation. It says the monies are being relocated within Lyon County. Why did you use the entire state population to determine your \$5 million figure?

LeRoy Goodman:

We are using it because we feel the whole pie is where you have to start—the whole \$951 million this year. That pie is distributed among every entity within Nevada, whether it is a special district, a GID, an unincorporated town, a city, or a county. We felt that the distribution of the whole pie was where the adjustment needed to be made.

Chair Kirkpatrick:

I have a question for your city attorney. Section 1, line 3, of the bill only talks about Lyon County. Let us be clear about what we are discussing here.

Brandi Jensen, City Attorney, City of Fernley:

The intent of the bill is to ensure the adjustment comes from the first tier at the original distribution of the base amount and not at the county level. The reason for that is our change from a town to an incorporated city. In the statutes and provisions of Chapter 360 of *Nevada Revised Statutes* (NRS) there is no provision for having any adjustment made without going through the Legislature.

Chair Kirkpatrick:

I am no attorney, and that is why I am asking you. I do not read the first section of this bill as saying what you are saying. In which direction are you headed? If what you are saying is the case, that means the bill needs to be amended right from the beginning. While you are checking on that, I am going to let Ms. Pierce ask her question.

Assemblywoman Pierce:

Mister Mayor, is Fernley imposing the maximum allowable rate on property tax?

LeRoy Goodman:

We are looking at that in our budget process this year. Two years ago, we were. Last year, the Department of Taxation, because of the dropping assessed valuation, said we could go to 50.18 cents. We are at 35.1 cents. This year

we are looking to move up to that 50.18-cent rate. Keep in mind, though, that the tax increase has been capped at 3 percent, so a raise in the rate does not do us a lot of good.

If I could elaborate on that, when Fernley was incorporated, we had a 15-cent tax rate. In 2003, the City of Fernley decided to raise its tax rate to the maximum allowed then, which was around 22.7 cents. However, that is when the tax increase was capped at 3 percent. Therefore, that increase and subsequent increases have not really had much effect.

We can raise the tax as high as allowable, and the assessed valuation can go up as high as allowable, but someone's tax bill can only go up 3 percent or 8 percent on commercial and industrial property. It is a Catch-22 situation. If you had a nice tax rate before 2003, you are fine.

The people of Douglas County finally decided to raise their tax rate 27 cents, but, as that cap precludes them from generating much more money, it did not do them much good. It will do them good eventually because there is essentially no abatement left due to the decline in assessed valuation. At that time, though, it did very little good. I cannot speak for the city fathers; at that time, I was not a member of the city council or the mayor.

Chair Kirkpatrick:

I am trying to make sure we are clear on just what it is we are talking about, so I am going to ask our staff. I know people have to approve these bills when they come out of the Legal Division. Mr. Guindon, can you clarify section 1 for me?

**Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division,
Legislative Counsel Bureau:**

I am not legal counsel, but having had to deal with the consolidated tax (CTX) distribution, as I read the bill, NRS 360.680 is the base allocation under the second tier of the CTX. The impact of the \$5 million in the bill, as drafted, would only be to the entities within Lyon County. There would not be any impact on any entities outside Lyon County.

I believe the fiscal note prepared by the Department of Taxation showing what the impacts would be from this bill as drafted is accurate. If I am in error, I would ask Mr. DiCianno or someone from his staff to come up and clarify this for us, or they could simply nod their heads from the audience. I see nodding heads.

Brandi Jensen:

That has been the confusion since the first discussions of this. It has always been seen as the City of Fernley going after Lyon County's money, and that is inaccurate.

Chair Kirkpatrick:

Let us be clear. This is the bill that is before the Legislature. I am not trying to be mean, but it is your responsibility to see that, before your bills get to us, they are drafted correctly or fixed. As legislators, we have to do this all day long. If we are trying to make a point, we have to be clear about what point we are trying to make. If this bill, as drafted, passes, then it and its fiscal note are what we have to live with. Whatever the issue is, I want the bill clear on what it says. Is this what you want? That is a yes-or-no question.

Brandi Jensen:

Yes, that is correct. If we need to amend the bill, then that is what we have to do. The intent was to make the adjustment statewide. That is why I was very surprised when I received the fiscal note. That was not our intent, nor has it ever been the discussion with the Department of Taxation.

Assemblywoman Benitez-Thompson:

I am trying to determine where the fiscal need is really coming from here. Is the City of Fernley providing substantially more services than it was when it incorporated ten years ago? If so, what are those services? Also, I see a lot of services provided by special districts within Lyon County. Could you also tell us how your citizens benefit from those?

LeRoy Goodman:

The services we provide now that we did not provide before are the:

- Road department.
- City attorney.
- City treasurer.
- City clerk.
- Municipal court.
- City engineer and staff.
- Community development department, including planning, zoning, compliance, building permits, plan reviews, and onsite inspections.
- Animal control, through a contract with the county for the use of the animal control facility in Silver Springs.
- Vector control.

These had all been done by Lyon County prior to the City of Fernley incorporating, but now we pay for all of them.

We had a maintenance agreement with Lyon County regarding parks. Since then, though, we have taken over complete maintenance of them. We do receive \$60,000 a year through an agreement with Lyon County for support of the parks because we are Lyon County residents, and Lyon County residents from other places use these parks. I believe the county has a similar agreement with the City of Yerington.

At the time of incorporation, we looked at the possibility of having our own police department. However, with the monies that were there, it was determined that the City of Fernley could not perform police services without substantially increasing taxes, which we could not do because of the tax cap. Nor would it have been really prudent or feasible, as the jail was still 50 miles away in the City of Yerington. The sheriff's department indicated at that time it could provide services in exchange for not turning over any monies.

Those services are not paid for just out of the consolidated tax (CTX). They are also paid for out of ad valorem taxes and other revenues that come into the county and city. These were things we had to take over.

Chair Kirkpatrick:

I want to go through the bill because there is a lot more to this bill than what we are talking about. I also want to point out that I have dealt with the CTX issue since 2005. My own city and constituents have no problem throwing me under the bus on this issue, so I definitely want to have this discussion. Everybody has a story.

Let us go back to Monday, March 27, 2000. This was before the Committee on Local Government Finance. The reason I bring this up is that other towns are trying to incorporate, and we are going to have this discussion again. It clearly says here that the Department of Taxation has addressed the issue and sent the county the information. The town of Fernley currently has budgeted approximately \$228,000 in services and supplies. The anticipated revenue stream will be sufficient to provide the same level of operating expenditures. It goes on to say discussions with the Committee for the incorporation of Fernley has revealed the intention of this Committee is to levy the same property tax rate that is now being levied in the town of Fernley. They, meaning the City of Fernley, will negotiate with Lyon County for additional consolidated tax revenue when the time comes to make a final determination regarding the cost of services to be provided.

I have looked at the feasibility studies that were done, and this is from an executive summary of local government finance. A feasibility study is done in order for people to incorporate. This is very clear on what your projected revenues were. There is a discussion, always, about the consolidated sales tax, based on the services that will be provided. This is clear, and it goes on to say it is also the intention of the Committee to contract with the Lyon County Sheriff's Department to continue to provide police protection just as it is being provided now.

I have to think cities go into this with wide open, very clear, very public hearings. I do not have the minutes. I do not think that is necessary. When we talk about term limits and new faces, we have to constantly make a record, and the record was made that the City of Fernley was clear going into it.

I am worried we are going to have a lot of other cities wanting to come into this because they think they will get consolidated sales tax. A bill came out, and they said, "Oh, yes, the county is going to give us this money." We asked if they had talked to the county, because that was not what they were saying. There has to be a better understanding.

I do not disagree that this has to be revisited. Going on to section 3 of your bill, it lists a couple of different things, but my own city complains to me every day, so I do not think this is enough. I do not think this addresses anything dealing with the structure. The structure appears to be working in the good times. It is unfortunate that, in the bad times, everybody realizes it is not enough.

I do not think that, in this study, we have accomplished anything. I do not believe we should waste the public's time doing a study on this. We can do this right here and stay here until midnight tonight. I want to know what we are really trying to get out of this. I have heard today that we need to go back and evaluate some of the services and what happens if we consolidate. If you have something better, I want to hear it. I can call a subcommittee, and I am willing to stay here all night long to have this debate. I am not wasting the public's money to do a study on this.

Brandi Jensen:

There are going to be other cities, as you mentioned, who will come before you to be incorporated. The statute is not clear on what the process is for the consolidated tax (CTX) distribution to be adjusted. What is going to happen with these new entities? There is a provision in Chapter 360 of *Nevada Revised Statutes* (NRS), mentioned by Mr. DiCianno and his staff, which is for cities that take on police protection as well as two other additional services mentioned in that Chapter.

The concern is that there are hospital districts, cable districts, and the like receiving four to six times the amount an incorporated city receives, while the services by that city far outweigh the services provided by those special districts. This is for the future, from this point forward, when a city incorporates. There is no administrative remedy. The statute for the appeal process expired before the city even incorporated, so there was no administrative process for the city to go through except for the Legislature. If the solution does not occur here, the city has to go through the courts.

The concern of the study would be what would be done about future cities and what to do with cities that are in that position at this time. Reading from the notes of that past meeting, you mentioned something unfortunate. We are probably the fifth or sixth entity to come before the Legislature asking for a modification to the CTX. The running theme seems to be that there is no process for doing that except through this body.

The base that was made for these original jurisdictions was done from a five-year summary from 1997, when the last amendment was passed. The summary was based on what the base amounts had been for the past five years, and that summary is what is used to determine the base amounts. An entity that did not exist at that time has no base to use. You will continue to have cities in that unfortunate circumstance. Unfortunately, as noted in the information you read, cities become incorporated based on the desires of five citizens, and those five citizens may not understand the complexity of the CTX.

Chair Kirkpatrick:

That raises a good point. That is why we do the feasibility study and the entire process leading to incorporation. It is unfortunate, but you have to live with the repercussions of the choices you make. I tell other entities all the time that if they choose to be their own city, I am not changing the rules because they chose to play on their own.

With respect to section 3 of the bill, how many new cities do we think we will incorporate? There will be probably two or three in the next 20 or 30 years. I do not know if that is worthy of a study. We can figure that out tonight. That is no problem. I will stay here and you can all stay with me. We need more meat in this bill. Interim studies cost a lot of money—\$10,000 to \$20,000. I have plenty of time during the current session to have this discussion, and a lot of the Committee members have no problem with staying until the wee hours of the morning to have the discussion.

As I say, interim studies are very expensive. There is a bill now in the Assembly Committee on Legislative Operations and Elections that does the same thing. We have to be very clear about what we want to study, because \$20,000 in my city will mean somebody's job, so I am not going to waste it. On the state level, we can put that \$20,000 into education. I know I am a little rough on you about this, but I am tired of hearing about the CTX; we are having the debate and I am still here.

Brandi Jensen:

This started long before the bill draft request was submitted. First you go to the Department of Taxation and make sure you exhaust any administrative remedies there. Then you should go the county to exhaust any administrative remedies there. I talked extensively to the legal counsels of North Las Vegas, as well as the counsels of Washoe County and Reno. Several other jurisdictions had concerns and were considering submitting bill draft requests. The reason I included section 3 was that there appeared to be a theme; we had all discussed asking for an interim study. I understand your concerns.

Chair Kirkpatrick:

I do not know if either the Nevada League of Cities and Municipalities or the Nevada Association of Counties (NACO) is represented here in the room, but I am sure they are listening on the Internet. You all need to get together and decide just what you want from a study. I do not disagree that we should revisit this, but we have time to do this during the session if this is all you want. My Committee is one of the hardest working committees, and the members will do whatever it takes. The League of Cities and NACO had better sit down together and figure out what you want a study of, if that is the common theme.

LeRoy Goodman:

We can strike section 3. This was something we put in because we felt it was necessary and because another entity—I believe it was North Las Vegas—was bringing forth a similar bill at this time. Sections 1 and 2 are what the bill was originally drafted for. We put the other part in simply to create a mechanism for this to be looked at for future cities that will be coming forth.

We are the only entity that has incorporated since 1997. It is clear there is not a mechanism in statute to make an adjustment when an unincorporated town disappears and a new incorporated city appears. We did not exist in 1997, and the time frame for appeals ended in 1998. By the time we incorporated, we had no remedy.

In our discussion with the Department of Taxation, they said there really was no remedy because that time frame had expired, and we were the oddball. We are

an incorporated city, but we do not receive the consolidated tax (CTX) distribution benefits of an incorporated city. We are left out in the cold, and that is what we are trying to remedy here. In 2001, the City of Henderson received such a remedy of another \$4 million to their base.

Chair Kirkpatrick:

Let us be clear, though. I believe Henderson worked with Clark County to do that. I do not think any adjustment was made to the base.

LeRoy Goodman:

I am not sure. I do know something was done for the City of Henderson effective July 1, 2001. Their base was adjusted by \$4 million.

We incorporated in 2001, the same year the City of Gabbs disincorporated. The Department of Taxation's spreadsheets still show the City of Gabbs, with a population of 315, as an incorporated city as opposed to an unincorporated town. We are shown as an unincorporated town.

I think this is something that simply fell through the cracks. However, as we found in our meetings with the Department of Taxation, there really is no remedy other than coming to the Legislature with a bill.

Chair Kirkpatrick:

In all fairness to the Department of Taxation, we are quick to beat up on them when they make a decision we do not like. They are doing what we in the Legislature tell them.

Thank you for coming. I think the bill needs work, at least in section 1. With that, we are going to go ahead and hear more testimony. I do not see anyone else signed in to speak in support of the bill. However, there are several in opposition. I do not want to pit city against city, but come up four at a time.

Joe Mortensen, Chair, Lyon County Board of Commissioners:

We stand in opposition to A.B. 47, the Fernley consolidated tax bill. Assembly Bill 47 does two things. First, it increases the base annual allocation of the consolidated tax (CTX) distribution to the City of Fernley by \$5 million while taking those funds from other local governments in Lyon County. Second, the bill requires a legislative interim study committee to study the CTX formula.

While Lyon County is not opposed to a legislative study of the CTX distribution formula, it is opposed to the \$5 million redistribution of the consolidated tax within Lyon County or on a statewide basis without a statewide study to

determine the effect on the 146 local governments. With me today is Dan Newell, City Manager of the City of Yerington; Lyon County Manager Jeff Page; and our lobbyist, Mary Walker.

At this time, I would like to turn this over to Mary Walker to provide some historical information regarding the CTX allocation between the City of Fernley and Lyon County. Then Mr. Page will discuss the County's budgetary limitations. Mr. Newell and I stand ready to answer any questions you may have.

Chair Kirkpatrick:

Ms. Walker, you handed something out to the Committee. Can you just summarize that for the record?

Mary Walker, representing Lyon County:

We provided two pieces of information regarding the brief history of the incorporation of the City of Fernley and the CTX allocation between Lyon County and the City of Fernley. The information includes the minutes of the March 27, 2000, hearing, by the Committee on Local Government Finance ([Exhibit E](#)), on the incorporation of the town of Fernley in Lyon County provided by the Department of Taxation. The other piece of information is the City of Fernley Petition for Incorporation ([Exhibit F](#)).

Before a city becomes incorporated, the citizens have to come before the Committee on Local Government Finance to determine the financial feasibility of that new entity. I have sat on that Committee for the past 12 years, and I was sitting on that Committee at the time the Fernley incorporation came before us. I would like to read Chair Marvin Leavitt's summary of the discussion of the allocation of the consolidated tax between Lyon County and the City of Fernley, which is on page 22 of the minutes:

When I looked at this, it looked like to me there are several things this is dependent on. Look at the consolidated tax number. We show \$98,000 coming in per the consolidated tax for this entity on a \$212 million assessed valuation and we show \$238,000 to the town of Yerington on a \$38 million assessed valuation. You look at relationships, they are really very different. If you look at the other cities, we also see substantially more coming in from consolidated tax. However, it looks like this proposal anticipates the county providing a number of services rather than the city doing them, and the County providing these services probably makes it somewhat equivalent to what they would otherwise have

a consolidated tax if they had reached some agreement to transfer money to the County instead of services directly.

Therefore, it was always the intent that the City of Fernley would have a lower proportionate share of the consolidated tax in relation to other Nevada cities because the City of Fernley would not be taking over several of the primary services provided by most cities, such as police and fire. In addition, Lyon County continued to provide funding for the City of Fernley Parks Department, even after the city's incorporation.

For the agreement between the City of Fernley and Lyon County, the Department of Taxation, in its financial analysis, provided the information that the City of Fernley would not be taking over any of the services such as police, dispatch, jails, and fire, and that money for parks and recreation would still be coming to the City of Fernley. Therefore, there would be a smaller amount of CTX provided to the City of Fernley in proportion to all the other cities in Nevada because all those other cities provided, either through contract or themselves, police, fire, parks, and those types of services, which the City of Fernley did not.

The bottom line is the money followed the service. If the county kept the service, then the county kept the money. If the new city took over the service, then the city received the additional revenues. That is what the baseline agreement was between the two entities.

The second document I provided you is the 1999 Fernley Petition for Incorporation ([Exhibit F](#)). In the petition it states that the Lyon County Sheriff's Department would continue to provide law enforcement services to Fernley instead of the City of Fernley having its own police department, jail, and dispatch. It further states that the fire and rescue services would continue to be provided by the North Lyon County Fire Protection District and not the City of Fernley. Lyon County provides funding to the City of Fernley to administer and maintain recreational facilities and parks.

The petition proposed Lyon County continue its funding for city recreational facilities and parks, and Lyon County still provides that funding in the amount of \$60,000 a year. Also, the amount of the City of Fernley's consolidated tax revenue estimated in the petition was \$87,979, or 5.4 percent of the total revenue of the proposed City of Fernley. The Fernley Petition for Incorporation continues to substantiate the fact that the City of Fernley was never intended to get a substantial amount of consolidated tax (CTX) monies because the county or the local fire district retained much of the services or funding for the services normally provided by the county.

That concludes my brief overview of the history of the distribution of the CTX and services between Lyon County and the City of Fernley. If you have any questions, I would be happy to answer them.

Assemblyman Anderson:

I am neither advocating nor opposing this measure. If this was done at the state level, as the mayor wants to do, what would you say about that? I would rather the distribution change at the state level and not just within Lyon County.

Mary Walker:

We would still be opposed to that because we believe it is a very complicated formula. There are 146 local governments in Nevada that receive the CTX. If you take the funds from the first tier, then it will affect all 146 entities. If they knew that was a possibility, many of them would be here today. We believe the study is the way to go.

I served on a technical committee for the Legislative Commission when we adopted the consolidated tax, and it took us 18 months. By the time we were done, out of all the local governments in the state, we did not have one in opposition. This is not something you can do in an hour or two.

Chair Kirkpatrick:

Ms. Walker, about the fiscal note from Lyon County, we need to make sure our staff has that because we do not have anything on the record.

Mary Walker:

I did email the fiscal note to your staff last night after our meeting. I am not sure whether they received it. We did not prepare one ourselves because the Department of Taxation had prepared one. This is the Department of Taxation's fiscal note. It comes from the local governments within Lyon County.

Lyon County would lose \$3.8 million. Yerington would lose \$101,000. The City of Fernley would go from \$145,640 to \$4.2 million. All the other districts, the largest of which are the fire protection districts, would lose around \$200,000. The South Lyon Hospital District would lose \$61,000. Some of these entities are just barely keeping their doors open.

Chair Kirkpatrick:

We need a fiscal note from Lyon County and not just the one from the Department of Taxation. Douglas County submitted one. If something is a little bit different, everybody will be quick to blame the Department of Taxation, and I am not going to let that happen. Mr. DiCianno and I have become working

partners since 2007, and I am not going to let him take any swords in the back. Lyon County has to provide its own fiscal note.

Mary Walker:

We will do so. We concur with the Department of Taxation's fiscal note, but we will send you one.

Chair Kirkpatrick:

Okay, but I still want your own. That way, Mr. DiCianno is off the hook. If one number is off, the county will be quick to throw him under the bus. Everybody does it, and I am not going to let that happen.

Jeff Page, County Manager, Lyon County:

To address your concern, our comptroller will get that taken care of posthaste. I provided you with a couple of charts ([Exhibit G](#)) that indicate where we are with the CTX over the past few years. This is meant not as a complaint, but merely to show you where we are financially. The CTX is 45 percent of our general fund budget. From 2008–2012, you can see a steady decline over the last several years.

The next chart ([Exhibit H](#)) shows the change, over time, in our numbers of full-time equivalent employees and where they are going in the future. Of note, the Board of Commissioners, all elected and appointed department heads, and our two collective bargaining units met on Friday, March 18, to discuss budget cuts and the direction we are going. We were able to solve our budget shortfall of \$1.8 million and also plan for the future endeavor of The Executive Budget, which is shown on the last chart.

This gives you an idea of where we are going with regard to personnel. If this bill were to pass and we were to lose \$4 million, those negative changes in employees and revenue would be further down on the chart in order for us to be able to provide our services.

Mayor Goodman referred to a number of cities in his chart ([Exhibit D](#)) regarding money received. The City of Winnemucca, the City of Elko, and the City of Yerington all provide services that the City of Fernley does not provide now, specifically police and fire protection. The City of Yerington is unique in that it does not provide fire protection itself, but has entered into an interlocal agreement with the Mason Valley Fire Protection District. At the time they signed the agreement, they were paying their assessed valuation at what was then the fire district's tax rate. That would mean it was good for a number of years before it was reevaluated and redone.

The City of Fernley did address that they have sent us an interlocal agreement requesting a certain percentage of our CTX funding, but within that request, they mentioned no services they are offering to take over at this time. We will work through that process, and we are more than willing to sit down with the City of Fernley to discuss their concerns about their CTX allocation and providing them funding if they want to take over some services.

Chair Kirkpatrick:

Thank you. Are there any questions? I think you are all sorry we had this discussion because no one is saying anything.

Dan Newell, City Manager, City of Yerington:

Just very quickly, we stand opposed to this bill as a result of losing nearly 30 percent of our consolidated tax (CTX). Thirty percent does not seem like much, but when you only have \$1 million, it is quite a bit. We do provide our own police service. We have a 40-cent tax rate, but 22 cents of that goes to the fire district. We really only realize 18 cents of our tax. One hundred and one thousand dollars is just too big a pill for us to swallow.

Chair Kirkpatrick:

Could you also provide a fiscal note?

Dan Newell:

I did.

Chair Kirkpatrick:

Did you provide one today? I see one from Douglas County.

Dan Newell:

Not today. I provided one on the Internet, and it is exactly the same number.

Chair Kirkpatrick:

Okay, let me try to locate that for the Committee. Does anybody have any questions? [There was no response.] Mr. Newell, if I cannot locate that fiscal note, can I contact you to get it? [Mr. Newell replied in the affirmative.] Okay, perfect. Would Mr. Roberts and Mr. Musgrove come up to the witness table?

Is there anyone else? There are two additional seats. If anybody wants to testify in opposition, just come on down.

Dan Musgrove, Director, Intergovernmental Relations, Office of the County Manager, Clark County:

Today I am representing the City of North Las Vegas. We appreciate the comments that have been made by the Chair about her city and all the issues we have had over the years. I will try to rectify that.

There is another bill, Assembly Bill 71—our bill—which goes up for a hearing in the Assembly Committee on Legislative Operations and Elections this Thursday. The reason for that is the bill deals only with the study and does not seek to change the tax distribution. I believe this bill, A.B. 47, came before you today because it does involve a change to the CTX formula.

We have gone down this road many times. As has been stated before by Mr. DiCianno and others, the only way to change the formula is to take from one entity and give to another. The pie is only so big.

North Las Vegas has realized that. That is why we have come to the Legislature with a totally different tactic. We believe, because of this new reality that confronts us all—this downturn in economic fortune and growth—that now is the time to sit down and reevaluate the way this is done. It is essential that we look at the formula and how it affects all 146 entities that reap the benefits of that formula.

You also have to take into consideration how all the other taxes work with the CTX. I am sure Ms. Gianoli and Ms. Vilardo sitting next to me, who have much greater legislative history on this, can tell you it was during the 1981 tax shift that the stage was set for the CTX to come before you in later years. This was in the shift from property tax to sales tax and vice versa between the state and local governments.

Here we are, in 2011, with a need for looking at both a base adjustment and the language dealing with growth. That is what we want to do. We have received unanimous support from all the local governments in Clark County. As you heard today, the other counties such as Lyon County and Washoe County all agree that now is the time to look at this. It will be extensive, but most of it will, to a great degree, be local government-generated staff who will work on it with the Legislature's supervision. We hope the Legislature will see fit to pass A.B. 71. We disagree with Lyon County.

Chair Kirkpatrick:

You cannot lobby that bill here, so you had better get better arguments for the study before Thursday's meeting of the Assembly Committee on Legislative

Operations and Elections. I am on that Committee, so I will let you off the hook until that meeting.

Dan Musgrove:

Absolutely. I will have with me Mr. Steve Hanson, who is one of the few people, along with Mary Walker, Mike Alastuey, and Marvin Leavitt, who were there in the beginning working hard on the study. They will talk to that Committee about why this is important.

With that, we oppose any change to the formula at this time. We do not think it would be in the best interest of the state and all the local governments. That is why I am here today, and I am ready to answer any questions.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? [There was no response.]

Carole Vilardo, President, Nevada Taxpayers Association:

I am speaking in opposition to the distribution of the \$5 million in this bill. There are a couple of points that need to be reinforced.

First, the statute does not allow for an adjustment. Whether that is right or wrong is for you to decide. If you want to create a provision in statute to allow for an adjustment, that is fine. If you want to create a provision for adjudication further than is currently allowed, that is fine. That is your policy decision. But to say \$5 million should come out of first-tier or second-tier distribution is pulling another number out of a hat with no foundation or basis other than best "guestimates" or arbitrarily choosing what to look at. A lot of that is population, and that was not the original intent.

While I did not serve on the Legislative Committee Studying Local Government Taxes in FY 1996–97, I think I missed only one meeting of all the meetings that Committee held, and I was involved in this. There was a problem, and there was a need to create consolidated tax (CTX) revenue. For example, the state had grown up. Many of the revenue formulas in the six taxes that make up the CTX had been created between 1944 and 1982.

A county got 100 percent of the Cigarette Tax and Liquor Tax. A county with one city split that revenue 50/50 with the city. In a county with more than one city, the county lost all the revenue. With the proliferation of cities, these formulas no longer worked.

The committee looked at the way these distributions were going and said they did not work anymore. That is how the CTX was born. It was born to try to

equalize the distribution of the tax revenues. If you want to change it, that is fine, but then the statute needs to be changed. Those are policy decisions. We have opposed every distribution that was suggested because they were pulling numbers out of a hat.

Chair Kirkpatrick:

Are there any questions? I think that, once we get out of here, there are going to be a lot of questions.

Lisa Gianoli, representing Washoe County:

Washoe County was initially neutral on the bill prior to testimony that the City of Fernley wants to go statewide on the distribution. We are opposed to that. We are willing to work with anyone on the study and in defining the scope of the study. We do have some concerns about looking at it in isolation, as was stated by the other two persons who testified in opposition. That is our position. Thank you.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? Is there anybody else who would like to testify in opposition? [There was no response.] Would anybody like to testify in support of this bill? [There was still no response.] Is there anybody who is neutral on this bill? [No one responded.] We are going to close the hearing on A.B. 47 and open the hearing on Assembly Bill 46.

Assembly Bill 46: Clarifies the inapplicability of certain partial tax abatements to various assessments relating to the adjudication of water rights and management of water resources. (BDR 32-468)

**Jason King, P.E., State Engineer, Division of Water Resources,
State Department of Conservation and Natural Resources:**

The Office of the State Engineer is the author of this bill and urges it be passed as written. Assembly Bill 46 resolves a conflict in the interpretation of the special assessment provided for under *Nevada Revised Statutes* (NRS) 534.040. That section provides that the board of county commissioners must levy a special assessment annually upon all taxable property within an area found by the State Engineer to require supervision in order to pay for the salaries of well supervisors and their assistants.

A conflict has arisen in the interpretation of NRS 534.040. Clark County has interpreted the special assessment established under that statute to be an ad valorem tax subject to abatement under NRS 361.4722 through NRS 361.4724. As a result, in 2008, for example, the amount to be levied was abated in the amount of almost \$192,000. As a matter of fact, our budget for

the Las Vegas Artesian Groundwater Basin has run a deficit in every year since 2006.

Our offices in other counties that levy the special assessment pursuant to NRS 534.040 interpret the assessment created by that section to be what it says it is—a special assessment and not an ad valorem tax subject to abatement. Such an interpretation is, in my opinion, the one most consistent with the legislative history of NRS 534.040 and the intent of this body in passing that statute.

Clark County's conclusion that the assessment required by NRS 534.040 is an ad valorem tax appears to be based, in part, on a 1973 Attorney General's Opinion. The Division does not believe that the 1973 Attorney General's Opinion accurately reflects the Legislature's intent because of amendments made to NRS 534.040 in 1995, which changed all references from "tax" to "assessment." In addition, subsection 2 of NRS 534.040 requires that the assessment shall be in an amount necessary to pay salaries and expenses of the well supervisor and any assistants. Abatement of the assessment is inconsistent with the requirement that it be sufficient to pay the salaries and fees.

It also appears that this situation arose, at least in part, because Clark County levies the special assessment according to the assessed value of the parcels within the Las Vegas groundwater basin, giving the assessment the appearance of an ad valorem tax. This method of levying the special assessment is not required by subsection 2 of NRS 534.040, however, and other counties in the state do not levy the assessment in this manner.

The special assessment of the Division of Water Resources should not be subject to partial abatement merely because of the manner in which Clark County has unilaterally determined to levy the assessment. Attempts have been made to resolve the conflict in the interpretation of *Nevada Revised Statutes* (NRS) 534.040, but they have been unsuccessful. It appears the only alternative to amending that statute would be to litigate the question in court with the possible outcome that the assessment will be abated throughout the whole state, leaving our Office unable to fulfill the mandates under NRS 534.040. However, the Division very much wishes to avoid the waste, expense, and uncertainty of litigation.

In conclusion, my point in testifying here today is to try to resolve any ambiguity in the statute. Our Office believes any assessment collected under that statute must be excluded from the abatement provisions of NRS Chapter 361 so our Office can comply with requirements of NRS 534.040

and collect sufficient funds to pay the salaries of our well supervisors and their assistants. I am of the opinion that the suggested amendment set forth in A.B. 46 will resolve this issue and will clarify this body's intent in passing NRS 534.040. With that, I would be happy to answer any questions.

Chair Kirkpatrick:

Thank you. I think you covered it very thoroughly. We talked about this last session. I know that, in the previous session, you were trying to work with Clark County. I know this has been an ongoing effort, and that last session I was probably the person who said we should see if you could work it out without bringing a bill to the Legislature. Does anybody have any questions?

Assemblywoman Neal:

Could you give me an example of what this looks like when it is applied? You are saying you want to keep any assessment that comes up and you do not want it to be part of the abatement. Is that right? It is not clear in my mind how this is applied.

Jason King:

In designated basins that are in need of administration by our Office, we have the ability, under NRS 534.040, to assess the water right holders in that basin. It is two-pronged. If more than 50 percent of the water use in that basin is for irrigation, then we actually assess this fee to only the water right users. If more than 50 percent of the water use in that basin is for municipal use, it then goes out to all the property holders as a special assessment. We collect that money. I think the statute is very clear that it goes into its own account and is used to fund work performed by our Office—water level measurements, inventories of the basin, and we can also conduct studies. I do not know if that answers your question.

Assemblywoman Neal:

Yes. I had to hear the words "water" and "basin."

Chair Kirkpatrick:

Does that mean it would apply to municipal water users in Clark County, of which we would all be a part?

Jason King:

That is correct. Right now, and for many decades, there has been this assessment. The assessors collect that from the property owners in the Las Vegas Valley and it is used for us to perform various duties in Las Vegas.

Chair Kirkpatrick:

I think that, even in 1946, when someone got the deed, it actually showed that assessed piece when they went through the mortgage process.

Assemblyman Goedhart:

In these special assessment districts, how is it determined what the cost is? Also, what is the mechanism for changing the cost depending on what you think the needs are of the special administration requirements?

Jason King:

It is decided on an annual basis. It is done internally through our Division. We sit down and look at what has been spent in the past and what we need to do in that basin in the future. Are we going to maintain the same level of work? Do we need to start thinking about a possible hydrologic study in the basin? If so, maybe we will start adding additional assessments for a period of, say, up to five years so that, at the end of the five-year period, that money would be there to pay for that study. The short answer is it is done internally on an annual basis.

Assemblyman Goedhart:

In a basin where most of the water goes to agriculture, that is only assessed on the people who own the water rights. How is that assessment sent out to the water rights owner? What type of bill would he get?

Jason King:

The county commission, through the tax assessor, collects it for us. There are occasions where we actually bill that personal property, but it is done through the tax assessor.

Assemblyman Ellison:

I am confused. When you said "tax assessor," he will hold this in trust; is that correct? You said the monies collected would be put into a trust. Is that through the tax assessor?

Jason King:

No, the assessment is collected and then placed in a special account at the state level that is earmarked for work to be performed only in that particular basin. It is the county, though, that does collect it.

Assemblyman Ellison:

That was what I was asking; does the county collect it, hold it, and then put it in the state's coffer? Is that correct?

Jason King:

That is how I understand it.

Assemblyman Ellison:

This money can be used for any kind of salary increases throughout your Division?

Jason King:

It is not to be used for salary increases. We may have two to six people working in a particular basin, and that money is used to fund their salaries, operating expenses, gasoline, and perhaps even their trucks and the rent on their workspace.

Assemblyman Ellison:

But is that not already included in your budget?

Jason King:

No sir, it is not. That is a separate revenue source.

Assemblyman Ellison:

Then who monitors this? Is it your Office?

Jason King:

Our Office does, but we have also had numerous audits to see how that money is spent.

Chair Kirkpatrick:

Mr. Ellison, I think the intent when this was put in place was to streamline the process with the assessors collecting it like they do when you pay your mortgage bill. At first, everything goes to one place and then it is disbursed. It is my understanding, from going through the water law books in my office, that the need was for the basins to pay for themselves so the rest of the state did not have to subsidize the needs of a certain basin. Is that correct?

Jason King:

That is correct.

Assemblyman Ellison:

Is this just clarification of what you have been doing? Is this cleanup of what you have been doing in the past, or is this something new altogether?

Jason King:

Yes, this has been in statute since 1949. We have been collecting what we call basin fees for many decades. Only since 2005 has there been an issue with the way Clark County interprets *Nevada Revised Statutes* (NRS) 534.040.

Chair Kirkpatrick:

I have just one last thing. We do not typically do things retroactively. I understand you are trying to make it right, but on page 2, line 19 of the bill, it says it applies retroactive to July 1, 2005. I think that would truly be a hardship for the county, but I understand you have been trying to work with them since then.

Jason King:

That is correct. That provision was put in because that was when the first abatement issue arose. However, I believe our Office would be willing to look forward if this bill were to pass.

Chair Kirkpatrick:

We do have to be out of here by 10:10 a.m. I seem to always cut off the county when they want to oppose something, so I am going to let them go first. All those in opposition please step up to the table.

P. Michael Murphy, Clark County Government Affairs, Las Vegas:

As you can imagine, we are in opposition to this. There clearly are some deep-rooted issues in reference to the issues that have been brought forward. The bill attempts to do what we think cannot be done, which is to change what is clearly an ad valorem tax on property to a nontax by legislative fiat.

The portion of the bill that causes the greatest concern is to apply this retroactively back to July of 2005. If this were to pass, it would mean that every tax roll would be reopened, recalculated, and rebilled. The change would cause an increase to almost every tax bill in the county for each fiscal year.

Although the amount is not, in some instances, a great amount, the cost to do that is substantial. The county would incur a cost of at least \$7.65 per each tax bill and parcel number that would be looked at for each year. The treasurer's office has also indicated that making the changes necessary to enact this bill would, in fact, cost an additional \$20,000 annually for reprogramming that process.

With that, again, we are opposed. I know your time is short, and we have stated what our concerns are.

Chair Kirkpatrick:

Do the counties work together on how to interpret this? It seems 16 counties do it one way and Clark County does it another. I would think the fact that 16 counties are doing it a different way might indicate there is a real reason why the way you are doing it may not be right. I do not know if you can get that answer for us later or how you want to answer that. It just seems that if 16 counties are doing it one way, then all 17 should be doing it the same way.

P. Michael Murphy:

I cannot address the other counties. I can only tell you this is what Clark County does. I will certainly get that answer for you.

Chair Kirkpatrick:

Okay, thank you.

Carole Vilardo, President, Nevada Taxpayers Association:

I was very happy to hear Mr. King state they are not married to the idea that this be retroactive. That created a lot of heartburn for me because of what it would do to the taxpayers, and I think it would set a bad precedent.

I am not going to try water law or try to say an assessment should not be considered a levy. That is, again, a policy decision for you to make, but I think that is where the issue is. Is the word "assessment" clear enough, or should it have been "levy"? I have no idea, but I would ask you to please make sure, however you process this bill, it is prospective and not retroactive.

Chair Kirkpatrick:

Okay. Does anybody have any questions? [There was no response.] Would anybody else like to testify in opposition? [Again, there was no response.] Would anybody like to testify as neutral on this bill?

Dino DiCianno, Executive Director, Department of Taxation:

The Department is neutral with respect to the bill. We do hope you agree that it should be prospective and not retroactive, because that would create certain complications. I do want to make a point of clarification. This is not just Clark County. Every county does this, so it would be consistent across the board. Thank you.

Chair Kirkpatrick:

Does anybody else want to testify? [There was no response.] Mr. King, do you want to come back with any last comments?

Jason King:

In response to the last testimony, that is news to me. We have not run into the abatement issue with the other counties. I would have to respectfully disagree with that last comment.

Chair Kirkpatrick:

Maybe we can get together and figure that out.

Assemblyman Ellison:

You heard the comments about the provision making this retroactive. Do you have any feelings about amending this so it is not retroactive?

Jason King:

We would absolutely be willing to make it prospective upon passage.

Assemblyman Ellison:

If it is not, I would not be in favor of it.

Chair Kirkpatrick:

Does anybody have anything else for the Committee? [There was no response.] Is there anybody else who would like to testify on Assembly Bill 46? Seeing none, we are going to close the hearing on A.B. 46. Is there any public comment at this time? [Again, there was no response.]

We will have just one Taxation Committee meeting next week, but we will have one extra meeting of the Committee on Government Affairs. Thank you, Mr. Nakamoto, for your willingness to give up another day. On Thursday we have a couple more bills, and I hope we can finish up any revenue discussion. If you have any questions, be sure to get them to us before then. Now Mr. Nakamoto has just one more thing for the Committee.

Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau:

The members of the Committee, in addition to receiving electronic versions of bill explanations the day before the hearing, as all of you did receive that email yesterday, will receive paper copies on the day of the meeting itself. Those are designed to be placed in the blue binders you received that say "Bill Explanations and Work Session Documents." I would ask, for those of you who have taken the binders back to your offices, to please bring them with you to Thursday's meeting so that we can insert the bill explanations and work session documents in them as we go forward.

Chair Kirkpatrick:

If you need to keep these in my office, I would be more than happy to share them with you. I have every single book like this from the time I first got here. It is very helpful to go back and refer to them.

With that, do not forget the floor session is at 10:30 a.m. If you need to go somewhere before then, please do not be late for the floor. So, until Thursday at 8 a.m., we are adjourned [at 10:08 a.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: February 22, 2011

Time of Meeting: 8:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Marian Henderson	PowerPoint presentation: "Consolidated Tax Distribution, or 'Can anyone explain the CTX?'"
A.B. 47	D	LeRoy Goodman	PowerPoint presentation: "City of Fernley AB 47 Presentation"
A.B. 47	E	Mary Walker	Minutes of the Committee on Local Government Finance meeting held on March 27, 2000
A.B. 47	F	Mary Walker	City of Fernley's Petition for Incorporation
A.B. 47	G	Jeff Page	Tables of consolidated tax distribution final estimate for fiscal year 2010–2011
A.B. 47	H	Jeff Page	Prepared testimony and bar graphs showing changes in Lyon County's full-time equivalent employees over time.