

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE**

**Seventy-sixth Session
February 15, 2011**

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:09 p.m. on Tuesday, February 15, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator Steven A. Horsford, Vice Chair
Senator Michael A. Schneider
Senator Moises (Mo) Denis
Senator Mike McGinness
Senator Joseph (Joe) P. Hardy
Senator Elizabeth Halseth

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Dino DiCianno, Executive Director, Department of Taxation
Carole Vilardo, President, Nevada Taxpayers Association
Terry E. Rubald, Chief, Division of Assessment Standards, Department of Taxation
Barry Smith, Executive Director, Nevada Press Association, Inc.
Christopher G. Nielsen, Deputy Executive Director, Department of Taxation
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Samuel P. McMullen, Las Vegas Chamber of Commerce
P. Michael Murphy, Clark County

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CHAIR LESLIE:

I will call the Senate Committee on Revenue to order and open the hearing on Senate Bill (S.B.) 31.

SENATE BILL 31: Extends the period for the Department of Taxation or a county to take certain actions relating to delinquent taxes. (BDR 32-434)

DINO DICIANNO (Executive Director, Department of Taxation):

Senate Bill 31 extends the period for the Department of Taxation or a county to take action on delinquent taxes. The Department has three years to initiate a lien on a delinquent taxpayer. Pursuant to *Nevada Revised Statute* (NRS) 353C.180, the Office of the State Controller has four years. We are requesting to make Taxation's time frame statutes consistent with the Controller's statutes.

CHAIR LESLIE:

The Controller has a bill, S.B. 81, that would change some of the same provisions.

SENATE BILL 81: Makes various changes relating to state financial administration. (BDR 31-396)

MR. DICIANNO:

I believe the Controller is extending the time frame from four years to six years.

CHAIR LESLIE:

If we pass S.B. 31 at four years and S.B. 81 is passed at six years, we are still going to be out of sync.

MR. DICIANNO:

Yes, we would.

CHAIR LESLIE:

Have you discussed this with the Controller?

MR. DICIANNO:

No, I have not. The Controller has not testified as to why she wants to change it to six years. My concern is if we go further out, it becomes onerous and therefore we are seeking to become consistent with the four-year period.

CHAIR LESLIE:

We will get her input. Four years is a reasonable time to you?

MR. DICIANNO:

The amendments on page 1 for S.B. 31 ([Exhibit C](#)) apply to NRS 360. The amendment to NRS 360.297 jointly and severally makes someone evading the payment of a tax or fee liable for delinquent taxes. We inadvertently removed the word, "willfully," and want it put back to determine whether the individual is a responsible party. The criteria for responsible parties are that they have to have knowledge that they did not report properly or in a timely fashion or did not pay the tax on time. It is part of their duties beyond the justifiable excuse—the reason we want the word "willfully" added.

CHAIR LESLIE:

Are you saying "willfully" was in the statute and then taken out? Do we know the reason it was taken out?

MR. DICIANNO:

We took it out. At the time it appeared correct with respect to determining responsible party determinations. We had cases which got convoluted and misguided, either at the hearing officer level or at the Tax Commission level. We need to correct the situation so people understand we are going after anyone with respect to the responsible party determination.

CHAIR LESLIE:

In the real world, once you took it out, you discovered the word needed to be added again.

MR. DICIANNO:

There is significant case law with respect to "willful" for hearing officers which the Tax Commission can rely upon to determine whether someone is a responsible party. The Internal Revenue Service utilizes that test to determine if someone is liable for a tax.

CHAIR LESLIE:

Are there any additional questions on the proposed amendment?

MR. DICIANNO:

We are also requesting an amendment to NRS 360.419, [Exhibit C](#), pages 1 and 3, which allows the Executive Director, or a designated hearing officer, to waive or reduce interest, the penalty or both. We found the bill did not contain the ability for the Department to waive penalties or interest on the fees we collect on Live Entertainment Taxes or the short-term lessor fees, known as the Governmental Services Tax or car rental tax.

CHAIR LESLIE:

Why was it not in the bill—is it an oversight?

MR. DICIANNO:

It was an oversight on our part.

CHAIR LESLIE:

Are there any questions on the amendment?

MR. DICIANNO:

The last amendment, [Exhibit C](#), page 3, for S.B. 31 is amending NRS 360.283. The Department works in conjunction with the Office of the State Demographer with respect to population estimates to be submitted to the Governor every year in March for the determination of the utilization and distribution of revenue. We recently had discussions with the Budget Division and representatives of the Department of Health and Human Services to help determine caseload impacts on respective budgets. It became evident we needed the Demographer to complete a 5- and 20-year projection to include age, sex, race and Hispanic origin estimates.

CHAIR LESLIE:

Have you spoken to the Demographer and the affected agencies; are they in agreement with the time frames?

MR. DICIANNO:

They are in agreement. The specific dates have been agreed to with the Demographer, Budget Division, and Health and Human Services.

CHAIR LESLIE:

Please work with staff to make sure the language is acceptable. Are there questions on the concept of what the Department of Taxation is trying to achieve?

SENATOR HALSETH:

What are the other taxes and fees, and why are they included?

MR. DICIANNO:

There are three specific areas we are trying to include in the waiver statute. One is any additional or potential fee in the future. We are also missing NRS 368A, the Live Entertainment Tax, which is our responsibility. The State Gaming Control Board deals with the Live Entertainment Tax on gaming and we deal with it on nongaming-related issues. We are also responsible for the collection and disbursements of the car rental tax or Governmental Services Tax in NRS 482.313. This gives us the opportunity to determine if there is good cause as to whether interest, penalty or both should be waived.

SENATOR HARDY:

The double asterisks paragraph on page 2 of [Exhibit C](#) deals with the taxes and fees we already collect, allowing the Department of Taxation to collect them.

MR. DICIANNO:

That is correct.

CHAIR LESLIE:

Is there any public comment?

CAROLE VILARDO (President, Nevada Taxpayers Association):

I am in support of S.B. 31. I do not support the Controller's bill extending the time frame to six years. When we can have conformity in statute, we have done a service to the State and taxpayers.

CHAIR LESLIE:

We will close the hearing in S.B. 31 and open the hearing on S.B. 32.

SENATE BILL 32: Makes various changes relating to the meetings of the State Board of Equalization. (BDR 32-433)

MR. DICIANNO:

Senate Bill 32 is sponsored by the Department of Taxation. An amendment ([Exhibit D](#)) proposes changes to the meetings of the State Board of Equalization. We have three specific areas that we would like to change. One change is to extend the period of time by which the Board meets to hear cases and make decisions from before October 1 to before November 1. Another change is for situations where there is a significant assessment change that would affect more than one county. The Board would have to notify the local governments of a broad-based equalization change. The last change is the requirement for the Board to do as the Committee on Local Government Finance and the Nevada Tax Commission do, by posting notifications on the Department of Taxation Website communicating future meetings and notifications to local governments and not publish them in the newspaper. There would be a savings in time, money and effort. We have a fiscal note attached and would be able to assume it in our budget. If a party or individual would need individual notification, we will add the name and address to our mailing list.

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

The graph ([Exhibit E](#)) shows that in the last decade, the State Board of Equalization caseload has risen substantially and shows no sign of returning to the lower levels of the past. The Board's session convenes on the fourth Monday in March and ends on September 30. The last few years we have had to go beyond the September 30 date because of the volume of cases. We have been advised by our legal counsel we are able to do it, but we would prefer to have it in statute. The November 1 date would be helpful because our current caseload is unmanageable under the statute time frame. The Board has become more active in the area of broad-based equalization and would like information provided on an annual basis so they can look at broad categories of properties.

Under law, the State Board of Equalization is to hear all cases by April 15 that have a substantial effect on tax revenues. We do not start until the last Monday in March, so in order to provide due process to the individual taxpayers, it has been difficult to meet the two-week deadline. If there were to be substantial impact, it would more than likely come from a large, difficult and complex case. The reason we need the ending date changed to April 30 for broad equalization actions is so we can provide the information to finance people in each county, and any substantial impact can be addressed in their budgeting process. The

amendment to S.B. 32, [Exhibit D](#), has two requirements for this notice: One, the Board has substantial impact, and two, if it would affect local jurisdictions in more than one county.

CHAIR LESLIE:

You are giving yourself two more weeks to do the notice. The last line in the amendment, [Exhibit D](#), indicates cases may be heard at any time and place before November 1 instead of October 1.

MS. RUBALD:

Yes, in order to address the caseload, because we are going over the September 30 date.

CHAIR LESLIE:

Are there any questions from the Committee?

SENATOR MCGINNESS:

What was the reason for removing the requirement for publishing in the newspaper? Was it strictly financial?

MS. RUBALD:

Yes, because the fiscal note on page 2 of [Exhibit D](#) came from the Department of Administration.

SENATOR MCGINNESS:

Not everybody is on the Internet. Are they notified personally if they are involved?

MS. RUBALD:

We notify the participants in any hearing by certified mail.

CHAIR LESLIE:

How much money do you save?

MR. DICIANNO:

We save about \$500.

SENATOR HALSETH:

What is the fiscal note for?

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MR. DICIANNO:

The Legislative Counsel Bureau requested us to attach a fiscal note for any budgeted item because we are a State agency. We estimated the cost savings at \$500 each year. We add it to our budget, so it is a wash.

SENATOR HALSETH:

You are doing this because of the reduction in cost?

MR. DICIANNO:

We are required to produce a fiscal note if there is any change in any cost item to the agency.

CHAIR LESLIE:

Is there any opposition testimony?

BARRY SMITH (Executive Director, Nevada Press Association, Inc.):

Section 2, pages 3 and 4 of S.B. 32 requires the newspaper to post meetings outside of Carson City. The State Board of Equalization meets in Las Vegas on a regular basis, so those two locations are regular meeting places. If a notice went out stating the Board would meet in another location, the taxpayers should be notified of the new location. The problem I have is if the meeting date changes or it is listed incorrectly, how will we know if a change has occurred?

CHAIR LESLIE:

All the affected parties receive a notice by certified mail. Is your concern for the unaffected people who might want to attend the meeting and do not have access to the Internet?

MR. SMITH:

Exactly. That is why it is a public notice.

CHAIR LESLIE: I will close the hearing on S.B. 32 and open the hearing on S.B. 33.

SENATE BILL 33: Consolidates provisions requiring confidentiality of certain taxpayer-specific records. (BDR 32-435)

MR. DICIANNO:

Section 1 of Senate Bill 33 consolidates the confidentiality provision of certain taxpayer-specific records. Section 2 relates to closed hearings before the Nevada Tax Commission. The changes will allow us to be more consistent with records associated with the Department, which is found in our general administrative provisions in NRS 360. The bill also provides clarification so a situation does not occur where the taxpayer has not notified the Department in advance of a request for a closed hearing. We could submit confidential information to the Commission prior to the taxpayer's ability to make a request.

We have two amendments ([Exhibit F](#)). The language in S.B. 33, section 1, subsection 2, paragraph (e) speaks to the terms of disclosure and confidence by the Governor related to the audit provisions of the Department. There is an omission, which can be addressed in section 1. The additions are items contained in NRS 372.750, which pertains to confidential records relating to the Department's administration of sales and use tax. The first amendment, [Exhibit F](#), provides for general examinations of records. We receive requests for release of information from the Department of Justice, police departments and other agencies on an individual for cases associated with the other agency. The second amendment consolidates the confidentiality rules in NRS 360 related to the taxes we administer. Chapters are eliminated related to county assessors and the Gaming Control Board. This request is for those provisions in section 3, NRS 361.044, 361.7384 and 368A.180 to not be repealed. The alternative would be to amend NRS 368A.180 to keep the Gaming Control Board and remove the language for the Department into chapter 360 of NRS.

CHAIR LESLIE:

Would you address the language, "by any other person," and what the intent is?

CHRISTOPHER G. NIELSEN (Deputy Executive Director, Department of Taxation):

The language, "any other person," is from NRS 372.750. Historically, it has meant someone who has an interest in the records. We would be comfortable if the language was narrowed to someone who has interest in the records.

MR. DICIANNO:

The intent of "any other person" is the State Controller, which does debt collection. We are okay with narrowing the language because we wanted to put the confidentiality rules specifically to the Department of Taxation in one specific section.

CHAIR LESLIE:

We will work on the language. It needs to stand on its own.

MR. NIELSEN:

There are two parts to S.B. 33, the consolidation of the existing confidentiality rules, which are in numerous chapters and passed by different Legislatures over the years and the definition of what "records" or "files" means. The second part of section 2 has to do with closing a loophole in the Open Meeting Law, so the statute protects the taxpayer. We worked out the wording with the Legal Division.

MR. DICIANNO:

The new language in S.B. 33, section 2, subsection 2, paragraphs (a) and (b) already exists in the Department of Taxation regulations, *Nevada Administrative Code* 360.182. Our attempt is to bring existing language into statute.

CHAIR LESLIE:

We understand the intent and it makes sense.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

We are opposed to S.B. 33 as drafted, but have not reviewed the amendment. Chapter 239 of *Nevada Revised Statutes* creates the presumption that public records are to be open to the public, and S.B. 33 reverses this presumption. It makes presumptively confidential a lot of records and files of the Department of Taxation, which by definition include all administrative and procedural material. We understand the intent of the Department and will take it into consideration while submitting additional written testimony for your consideration.

CHAIR LESLIE:

My understanding of the testimony was not changing but consolidating and bringing forth regulations that already exist.

MR. SMITH:

My concern is the broadness of the language in S.B. 33. Proprietary and confidential information is covered in both sections, so the Department of Taxation has the ability to determine proprietary and confidential information that should not be released. The section of the bill dealing with the Open Meeting Law and the timing creates a broad exemption of the Open Meeting

Law. In this instance, the Nevada Tax Commission should not have to turn over any materials provided prior to a meeting. The deadline could be moved up.

MS. VILARDO:

I am supporting S.B. 33. The best way to look at the bill is reviewing the leadlines on repealed sections on the last page. By adding this language to NRS 360, it gives us one set of rules, cleans up confidentiality and gives consistency in statute.

CHAIR LESLIE:

Does the drafting language in section 2 protect the taxpayer and the public?

MS. VILARDO:

As I read it, I think it will work.

CHAIR LESLIE:

I do not think there is an attempt to put an exemption into the Open Meeting Law.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce):

We are in support of S.B. Bill 33 as it is drafted. As it is amended, the discussion about clarifying the language as it relates to any other person is something we would support.

P. MICHAEL MURPHY (Clark County):

We are neutral with a couple of concerns. The confidentiality requirements related to local tax administration are found in NRS 361.044 and NRS 361.7384. Did the Director say they wanted to pull it out? We believe section 3 repeals those and therefore leads one to assume county officials are covered by the new confidentiality provision. We would like it to be clarified as one issue.

CHAIR LESLIE:

As I understand, the amendment is removing the repeal.

MR. MURPHY:

The other concern in section 1, subsection 1, line 8 indicates "any other person" engaged in the administration or collection of any tax, does that cover county officials?

MR. DICIANNO:

The intent was not to engage other county assessors; it had to do with specific taxes that we administer and are associated with. I am open to better and more clarifying language.

CHAIR LESLIE:

I will close the hearing on S.B. 33. Staff has a follow-up to Senator Horsford's request for room tax statistics.

JOE REEL (Deputy Fiscal Analyst):

This is in response to Senator Horsford's request regarding the 3 percent room tax that goes to the State and how it is broken out between counties. The table ([Exhibit G](#)) also shows each jurisdiction within those counties. Clark County has multiple jurisdictions and Washoe County has only one. It identifies the percentage of the revenue raised in Clark County and Washoe County. The majority comes from Clark County.

CHAIR LESLIE:

Washoe County's figure is so small because it has reached the cap on the room rate.

RUSSELL GUINDON (Principal Deputy Fiscal Analyst):

In an effort to be consistent with the Governor's *Executive Budget*, we used those numbers to create the estimated share for the different markets.

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CHAIR LESLIE:

Are there any public comments? The meeting of the Senate Committee on Revenue is adjourned at 2:10 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Sheila Leslie, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
S.B. 31	C	Dino DiCianno	Amendment
S.B. 32	D	Dino DiCianno	Amendment
	E	Terry Rubald	Caseload Statistics
S.B. 33	F	Dino DiCianno	Amendment
	G	Joe Reel	Room Tax Chart