

**MINUTES OF THE JOINT MEETING  
OF THE  
ASSEMBLY COMMITTEE ON TAXATION  
AND THE  
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Seventy-Seventh Session  
March 5, 2013**

The Joint Assembly Committee on Taxation and the Senate Committee on Revenue and Economic Development was called to order by Chairwoman Irene Bustamante Adams at 1:01 p.m. on Tuesday, March 5, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblywoman Irene Bustamante Adams, Chairwoman  
Assemblywoman Peggy Pierce, Vice Chairwoman  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman Jason Frierson  
Assemblyman Tom Grady  
Assemblyman Cresent Hardy  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Randy Kirner  
Assemblywoman Dina Neal  
Assemblyman Lynn D. Stewart

**SENATE COMMITTEE MEMBERS PRESENT:**

Senator Ruben J. Kihuen, Chairman  
Senator David R. Parks, Vice Chairman

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Senator Moises (Mo) Denis  
Senator Debbie Smith  
Senator Ben Kieckhefer  
Senator Michael Roberson  
Senator Greg Brower

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Russell J. Guindon, Principal Deputy Fiscal Analyst  
Michael Nakamoto, Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Gina Hall, Committee Secretary  
Mike Wiley, Committee Secretary  
Gayle Rankin, Committee Secretary  
Gariety Pruitt, Committee Assistant

**OTHERS PRESENT:**

Gary Peck, Executive Director, Nevada State Education Association  
Richard G. Sims, Ph.D., Chief Economist, Research, National Education Association  
Francis Flaherty, representing the State Bar of Nevada  
Danny L. Thompson, representing the Nevada State AFL-CIO  
Al Martinez, representing We Are Nevada, Inc. and the Service Employees International Union Nevada, Local 1107  
Robert Fulkerson, representing the Progressive Leadership Alliance of Nevada  
Fernando Romero, Regional Coordinator, Nevada, National Council of La Raza  
Maddi Eckert, Private Citizen, Reno, Nevada  
Lynn Warne, President, Nevada State Education Association  
Bernard Anderson, Private Citizen, Sparks, Nevada  
Bryan Wachter, representing the Retail Association of Nevada  
William Uffelman, representing the Nevada Bankers Association

Stan Wilmoth, President and Chief Executive Officer, Heritage Bank of Nevada

Bob Linden, President, Shred-it Las Vegas

Gary Ackerman, Owner, Gaudin Automotive Group, Las Vegas

Tyler Corder, Chief Financial Officer, Findlay Automotive Group

James Wadhams, representing the Nevada Hospital Association and the American Insurance Association:

Terry Graves, representing the Henderson Chamber of Commerce

Tray Abney, representing the Chamber of Commerce of Reno, Sparks, and Northern Nevada

Brian McAnallen, representing the Las Vegas Metro Chamber of Commerce

Paul J. Enos, representing the Nevada Trucking Association

Ed Meyer, President, Nevcal Trucking, Sparks

Daniel Allen, Chief Financial Officer, ITS Logistics, Sparks

Mike Olsen, Owner, Sagehill Dairy, Fallon

Chris Nielsen, Executive Director, Department of Taxation

Mike Patterson, representing the Lutheran Advocacy Ministry of Nevada and the Religious Alliance in Nevada

Carole Vilardo, President, Nevada Taxpayers Association

Janine Hansen, representing the Nevada Eagle Forum

Geoffrey Lawrence, representing the Nevada Policy Research Institute

Charlene Bybee, Private Citizen, Sparks

Jose Solorio, representing the Si Se Puede Latino Democratic Caucus

Hermann Glockler, Private Citizen, Reno

Autumn Tampa, Private Citizen, Las Vegas

Lisa Muntean, Private Citizen, Las Vegas

**Chairwoman Bustamante Adams:**

I am grateful that we have a packed room. It is important for the State of Nevada to make sure we discuss this topic. I would like to welcome those in Las Vegas as well. We have very limited time today so I am going to give an overview on how I am going to run the meeting today.

In the first hour we will have the sponsors of the bill come up and make their presentation. We will let the Committee members ask questions. We will also hear from those in support of the bill as is. It is just not possible for everybody to come to the witness table. I do not want you to feel discouraged if you cannot come to the witness table. I want to make sure you still have an opportunity to have your testimony heard. You have several options: 1) you can go to the Legislature website and under Share Your Opinion on Legislative Bills you can enter your written testimony; 2) on the sign in sheet

you can mark whether you are in support, opposition, or neutral on the bill, and this will become part of the public record; 3) you can send your testimony to me and I will make sure we include it; and 4) you can contact your individual legislator. They are responsible for your voice and have the authority to vote on your behalf. In the second hour, we will hear from those in opposition to the bill, or from those who have concerns about the bill. I appreciate that business community members have coordinated their responses. In the remaining time we will hear from those in neutral. The Department of Taxation will be addressing the fiscal note during that time.

I will now open the hearing on Initiative Petition 1. I would like the presenters of I.P. 1 to come to the table.

**Initiative Petition 1: Imposes a margin tax on business entities in this State.**

**Gary Peck, Executive Director, Nevada State Education Association:**

The Nevada State Education Association (NSEA) represents 25,000 teachers and education support staff across the State of Nevada.

I want to thank this Committee for the chance to present the case for the margin tax that was put forward in the ballot initiative cosponsored by the AFL-CIO and by NSEA.

It is important to take note of the fact that this initiative is not NSEA's, it is not the AFL-CIO's, it now belongs to the people of the State of Nevada. More than 150,000 people signed that petition in less than two months. Of course, all of those people cannot be in the room today, nor can the many hundreds of thousands of other Nevadans who strongly support what we are aiming to do with this margin tax. We do, however, have a number of supporters here today who will be testifying before this joint Committee. They are partners with whom we have been working for months, indeed for years. Those partners include We Are Nevada, the Coalition of Public Employee Unions and Community Organizations, Latino leaders from across the state, and the Progressive Leadership Alliance of Nevada and many of its member organizations. They include many other community organizations with which we have been working on this most important issue.

It is obvious that these folks are tired of the failure to fully and adequately fund our kindergarten through twelfth grade (K-12) education system. They are tired of the same arguments against fixing what is obviously a broken tax structure and system that creates a structural deficit that makes it impossible to meet the needs of our kids, our families, and our state's economy. They are tired of the

overcrowded classrooms, the lack of early childhood education programs, too few all-day kindergarten options for kids, and too little professional development for educators. They are certainly tired of too few English language learner (ELL) educators and too little in the way of ELL programming for the many thousands of kids in this state who need this.

We believe that the education initiative, the margin tax that has been put forward and now belongs to the people of the State of Nevada, is the right tax for this state now. It will broaden out the tax system and tax burden in an appropriate way. It will ensure that big businesses pay their fair share. It will do all of this in a progressive way that will make ours a less regressive tax system than it currently is.

We hope that there will not again be a caucus of no. We hope that we will not hear the same old arguments that have led this state and our K-12 education system into a ditch that is damaging our kids every single day. I do not believe there is a member of this joint Committee who does not understand and embrace the need to do something to more fully fund our education system and to fix the problems we all acknowledge exist. The problem is that what has been put forward to date is too little, leaves too many kids behind, and there is no clear way of funding what has been put forward.

I am here today with Richard Sims. Richard is the chief economist for the National Education Association. We rely on his expertise. He is the former policy director of the Institute on Taxation and Economic Policy. He was the director of applied economic research at the Carl Vinson Institute of Government at the University of Georgia, the director of taxation and economic policy for the Arkansas Legislature, the director of the office of economic analysis for the Kentucky Legislature, and was a senior advisor to the Parliament of the Republic of Moldova. Mr. Sims is an expert who certainly understands the margin tax. He is perfectly capable of answering questions, technical questions, you might have about the tax. Again we are hopeful that this Legislature will do something to move us in a positive direction so that our kids get the opportunity to succeed that they deserve, and so that the economy can thrive in the new millennium. It is not just a justice issue and a civil rights issue, it is also a sound economic policy issue.

**Chairwoman Bustamante Adams:**

We will take questions from the Committee after Mr. Sims speaks.

**Richard G. Sims, Ph.D., Chief Economist, National Education Association:**

I would like to pick up where Mr. Peck left off. He was saying that this is not just a good thing for education, it is a fair thing to do. Most importantly if you start from the standpoint that you are totally neutral on questions of education, school funding, children, and issues along that line, and if your only concern is growing the economy of Nevada, this is an excellent way to do that. I say that from the standpoint that the biggest barrier to Nevada's long-term growth is its lack of a skilled workforce. I know this personally from having lived here for a number of years. We know this from firms that have looked at Nevada and turned it down to go other places that have a better, more educated, more flexible workforce. We know it because leaders of some major corporations have told us that the things they look for when picking a place to locate or expand is number one, two, and three, the workforce, education, and education.

There was a conference in Washington, D.C., two weeks ago on the future of manufacturing in America [The Atlantic, Manufacturing's Next Chapter, 2/7/13] partially on reshoring jobs, bringing jobs that had been sent overseas back to the United States. The participants in the forum were virtually all of the Business Roundtable chief executive officers (CEOs) of major corporations in the United States, the head of General Electric, the head of Boeing, and the head of Siemens, a major international firm that is into medical devices and a large number of technology issues. There were a lot of smaller CEOs from firms, such as the one developing the new three dimensional (3D) printers. This gentleman was asked by some members of the panel what was his major issue in growth and expansion. He said it is the workforce. He needs more workers who can engage in this. I asked if he was talking about high-end workers. He said no, he was talking about high school educated workers, the young people. He hires kids were his words. I asked what about taxes? Is that a barrier for you? He said he would love to pay taxes to any place that will provide the workforce he needs.

Jeff Immelt of General Electric, the largest manufacturing firm in the country, was asked specifically what his firm looked for when it located business or expanded. He said it is the workforce and education. The moderator asked, What about taxes? We hear a lot about taxes and business competition among states. Is that a factor? He skipped that and said it is education and taxes every time. That is what we make our decisions based on. The taxes are a secondary issue. He elaborated to say, we think if we get too good, a deal on taxes, in other words we pay too little in taxes, that means we get less of what really matters to us over the long-term, which is the quality of the workforce. Manufacturing firms typically build with a 40- or 50-year planning horizon.

They need a workforce that is going to be able to do the work they need stretched over that time period. We have looked at various forms of raising funds to provide for the workforce, bringing businesses more into it. Business is a major beneficiary of education spending. They are also, generally speaking, a willing partner in funding education. They want to be treated fairly. They want to be treated equitably. Generally speaking they are not opposed to paying taxes if it meets those types of criteria.

As I have started exploring some of the nuances of the margin tax one of the interesting things is it turns out to meet most of the conservative criteria for a good business tax. A good business tax should be as broad-based as possible. It should have rates as low as possible to meet the revenue needs necessary, and make as few distinctions among types of businesses or industries as possible. This tax meets those criteria much more than most states' income taxes. State's corporate profits taxes tend to be very selective, treating different industries differently. They tend to vary tremendously year from year. They are not a stable revenue source. From the firm's standpoint the taxes they owe vary tremendously year to year, and it becomes very much a game within the corporation itself to shift and allocate accounting resources around, to minimize their corporate tax payments. A tax such as the margin tax would take out, to a very large extent, the issues of discrimination among different businesses. It would treat most businesses pretty much the same, as much as any realistic tax does. It would minimize tax planning for tax avoidance by corporations. If you are in business to make sales you will pay the tax. That makes it very simple. The biggest concern most businesses have is the complexity of federal and state tax forms. That is what they routinely tell tax surveyors. That is what they tell us when we have asked them about it. Their concern is with complexity. It is not with levels so much as it is with all the time they spend trying to get it done and figuring out how to reallocate their internal resources to minimize taxes. This tax gets around that. From both a taxpayer's standpoint and from the state's standpoint, it becomes a very stable, reliable tax.

The biggest threat to Nevada's economy over the last few years, and going forward, is its high volatility. It has a narrow economic base. It has a narrow funding base. Those two work together in making the state more volatile than it should be.

Our economy in Nevada and our funding in Nevada are more volatile than almost any other state, year to year. It is because there is a narrow base of economic activity to rely on and because of the way we choose to tax ourselves. Changing to a margin tax will help us diversify our revenue base and

make it more stable. It is being used to fund education, which is the only source of improving long-term diversity and stability in the economy. The key to getting economic stability and economic diversity is using a tax that is going to be reliable year after year. Profits taxes, by contrast, tend to vary tremendously year by year.

**Chairwoman Bustamante Adams:**

Will you be covering the technical parts of the bill?

**Richard Sims:**

I will do an overview and then if they have specific technical questions I will answer those, and some I will need technical help on. A big concern that most of the U.S. states have going forward is that we are becoming less competitive with our international neighbors. The United States spends less on education than does the average of the industrial world. We also tax our corporations less than does the average of the industrial world. The two do not necessarily go hand in hand. That tends to be the outcome. Nevada spends less on education than most other states and many of those states are currently in the mode of increasing education funding at this time. Some are increasing taxes. Some are shifting resources around. It is going to be a challenge going forward for all of our states.

One of the issues that we have come up with is the question of whether raising a tax such as a margin tax is going to be harmful for businesses going forward. When we look at surveys of business taxation we find that states with relatively high taxes tend to be relatively high growing. When I say relatively I mean faster than the average state. I looked in particular in the decade before the recession we went through, the seven or eight years before the recession that began in 2008. Of the eight fastest-growing states, six were among the highest-taxing states in the nation. Of the ten highest-taxing states, six of them were among the fastest growing states in terms of personal income growth in the years before the recession. Of the low-taxing states, they tended to perform below average for the 50 states. It does not seem to be the case that low tax helps growth. Similarly, on business taxes we see no correlation between whether you are a high business tax state or a low business tax state and long-term growth. The reason for that is simply that if you are a high-tax state, that probably means you are a high-spending state, and part of that money goes for spending business values in terms of growth expansion in the future. The business climate studies that we have looked at that take education into consideration, find that is the number one criteria that businesses look at. As I mentioned the CEOs of the Business Roundtable said education was the number one thing they looked at. When we look at the evidence from the



studies on how states actually perform we see that show up in the numbers. I mentioned the margin tax being a stable source of revenue. That is very important for planning purposes, particularly when you talk about funding things like education that do not have the latitude to vary much throughout the course of the year you need stable funding sources. You also need growing funding sources. The Nevada tax system has one of the most inelastic funding systems of any of the states in the country. By that I mean that its revenue grows slower than almost any other state with regard to growth in personal income, or in its funding needs. Your revenue system only grows about .75 for every 1 percent of growth in the economy. You are continually falling short and having to either make budget cuts or raise rates just to stay even.

Passage of the margin tax would greatly increase the fairness of the overall tax system. You are only dependent on very few sources of income right now. Sharing more of the tax load with a broad range of businesses improves fairness, stability of the funding source, and your long-term ability to grow. The other significant feature of the margin tax is it tends to be growth oriented. Corporate income taxes tend not to grow as fast as growth in the economy. Most taxes that businesses pay tend not to grow quite as fast as growth in the economy. From the empirical studies we looked at, the margin tax would grow about as fast as growth in the overall economy of Nevada, which would be a great improvement in the funding source you have now. It would allow us to expand the overall coverage of the tax sources coming in and direct those toward long-term growth, all of which would be good for growing the economy.

Since it is being spent for education one of the big concerns that we often have is our rural communities in Nevada do not benefit from many of the economic development programs that the state offers. The key to growth at the local level is direct funding through the school systems. We know that in Nevada's smaller counties the school system is the number one employer. Many of you represent small counties, where typically the school is the number one employer and also the largest employer of college graduates in the county. I looked a couple of years ago in the Nevada counties and in one-third of our smallest counties the school system employed one out of every two college graduates. There is no other industry that is anything like that, so the immediate spending on education goes into small, rural communities. It helps stimulate the local economy. The school budget becomes the source of revenue for other small businesses. It becomes retail sales. It goes into maintaining other local businesses.

We looked recently at what would happen in Nevada if we passed the margin tax and used the money to fund education. We did an econometric study on

this to see what would be the net effect. The passage of the tax, like any tax, tends to slow the economy somewhat. Spending money for education tends to stimulate it somewhat. It becomes an empirical question to see what actually happens overall as a result. If the margin tax were enacted in Nevada, assuming that in the first four years of enactment it brings in the \$800 million, and assuming the money is all spent for education, you would end up with a net increase of around 7,500 jobs in the state. You would have a tax increase, but you would also have a spending increase. When you spend money for public services, particularly such as education, that tends to be very labor intensive. You create a lot of jobs per dollars spent. Even before you factor in the value of education as a human capital issue, the fact that you are spending it through the school budget, hiring workers who spend in the local community, this has a very stimulating effect. It tends to have a ripple effect throughout the economy. It is one of the most stimulating things you can do in the near term to grow the economy and to maintain it. The smaller communities and local economies depend tremendously on school budget spending. This is a way to increase that spending to help those smaller communities. At the same time you are invested in the long term in improving your workforce quality, that is necessary to attract large businesses overall.

**Assemblyman Hickey:**

It was interesting to hear you talk about the bill and characterize it as one that would be an excellent way of helping grow the economy of Nevada. You said that a couple of times. You also emphasized that one of the good standards for a tax that is palatable is the lack of complexity. My question to you is why is it that only one other state to my knowledge, that being Texas, has adopted a similar margin or franchise-like tax? It seems that their problems with it have been that it is anything but uncomplicated or uncomplex. I am wondering if you could tell me what are the problems Texas has had with the tax and why have they tried in so many ways, even in a special session, to reverse a lot of what the original bill did, and why other states have not looked at the model you are proposing?

**Richard Sims:**

Several states have looked at similar taxes. They have not fully enacted them. Illinois looked very closely at a similar margin tax that would have been a universal tax that generated a lot of revenue. They tended to get blowback from businesses that would end up paying more. It became an issue of trade-offs of people that have a current system. The original taxes on businesses tended to be based on profits. It is a question not of starting from scratch and putting a new tax in in most states, but going from a current profits-based tax that everyone understands to another tax that adds an

additional layer of complexity. They simply have not been able to deal with that Texas has had a franchise tax for a number of years, up until about ten years ago. That was a broad-based, easy to administer, high-revenue tax. It tended to be unpopular because most large firms tended to pay it and small firms could get out of it because it was a fairly poorly designed tax. The current tax they have in Texas has been chipped away because of trying to make special considerations and accommodations, which there is always pressure to do on any tax.

An economist would love to have a tax that was universal for everything, with no exemptions and no exclusions, that would give you the broadest base and the smallest rate. That is what I think Texas set out to do with their margin tax, but they let it get more complicated than it needed to be. This margin tax is trying to get away from being as complex as the tax in Texas. It still has a lot of the features simply because it is necessary in order to accommodate the degrees of fairness it needs to have and the ability for it to be flexible going forward. It is an experiment. The Texas tax is unique as one that we looked at to say here is a different form of revenue that overcomes a lot of the deficiencies of profits-based taxes. As Justice Brandeis said years ago, states are laboratories of democracy. We look at Texas as the laboratory. We see this tax as a continuation in the laboratory of experimenting with this tax. If there are things that come up that need to be changed in the future, they can always be modified and adjusted. It looks like getting out of the box, we know the experience of profit-based taxes have not been good. This type of tax overcomes those weaknesses, and even though it has its own complexities and difficulties, it overcomes some of the ones we already understand. I think it would be much more fair, efficient, and effective than the alternatives.

**Assemblyman Frierson:**

My question is a very general one. When you were characterizing a high-tax state did you mean simply a high tax rate, high tax return based on broadness of the tax base, or revenue based on population?

**Richard Sims:**

Revenue based on the state's personal income. The rate states impose means nearly nothing because very few firms end up paying overall anything near the marginal tax rate. So what economists tend to look at, in comparing states or comparing nations, is the amount of revenue actually generated. Whatever your statutory rates and structure say, the proof in the pudding is when you look to see how much revenue is generated from it. Revenue generation is the standard we use. When I mentioned the international standards, looking at the revenue from our business taxes it tends to be low relative to the rest of the

world. Our statutory rates are high but we allow ways around those rates that make the system more complex and unreliable.

**Assemblywoman Neal:**

My question revolves around page 7, lines 29 through 30, and page 8, lines 34 through 37. Taking those two provisions together, I just want to understand the reasoning behind excluding foreign royalties and foreign dividends, and the language of the license exclusion from the gross revenue. My question is framed that way because we have just passed an online gaming bill, in which there will be the opportunity for a person to submit to the jurisdiction of the United States and participate in creating revenue. I am wondering why we are excluding it and what was the reasoning behind that? Let me clarify, it is because the date is 2016 that this would come into existence, which federal law could come into existence.

**Richard Sims:**

As I understand it our attorneys were looking at the federal legislation and determined that this was the best language to accommodate that. I was not in on the discussion, but I think looking at the federal legislation and seeing where we needed to be was the background in general. It can be modified after 2016 of course.

**Chairwoman Bustamante Adams:**

Assemblywoman Neal, did that answer your first question?

**Assemblywoman Neal:**

The licensing provision, which was on page 8, allows the exclusion of the total revenue from the amount of the gross revenue. The \$500,000 licensing fee then would be subtracted from the gross revenue and exempt, correct?

**Richard Sims:**

As I understand it, yes.

**Chairwoman Bustamante Adams:**

I have a question on section 22. Help me understand how the tax works? What is the determination of the margin? How would that process happen? How would the tax actually work for a business in Nevada?

**Richard Sims:**

From the business standpoint I am not sure I can answer that question. I was looking at this from an economic perspective, not from the individual firm's perspective. I will have to get help on that question.

**Francis Flaherty, representing the State Bar of Nevada:**

Are you referring to section 22 of the initiative?

**Chairwoman Bustamante Adams:**

Correct. Page 5, line 15. The determination of the margin is the way that I understand that section.

**Francis Flaherty:**

The section starts out by making clear that the initiative itself is limited by the contours of the *Nevada Constitution* and the *United States Constitution*. From there you take the amount of total revenue, which is defined elsewhere in the petition, from the entire business, and you have to go down to section 23 to see how the tax is actually calculated to determine the entity's margin. It would be the lesser of 70 percent of total revenue or the total revenue of the business entity minus either the cost of goods sold or compensation, at that entity's option. From there you arrive at the taxable margin. Depending on the entity, that could be subject to further limitation based on the part that is apportioned to Nevada. We cannot tax corporations or businesses for income they earn in other states. It has to be limited to Nevada.

**Chairwoman Bustamante Adams:**

So even if a business was not profitable they would still be subject to it?

**Francis Flaherty:**

Potentially, yes. Just like any other taxes. You do not necessarily not have to pay taxes just because you are not profitable. I suspect and I fear that if that were the case we would suddenly have a lot more unprofitable businesses.

**Assemblyman Kirner:**

My question has to do with the tax rate. Initially it is larger than 2 percent, but it then settles down to 2 percent. We heard a similar bill in the 2011 Session [Assembly Bill No. 582 of the 76th Session], and the 2 percent number is about 2½ times larger than it was 2 years ago. I am wondering what was your reasoning? Why 2 percent? Why not 1 percent? Why not 3 percent?

**Richard Sims:**

It was a judgment call, as many of these things are, on the amount of revenue that would be feasible at this time. We were not willing to overkill and shoot for a super large number, but were looking for a minimum step toward adequacy from the funding side, and so the revenue number that got us that was 2 percent.

**Gary Peck:**

I would simply add that the 2 percent rate still represents a lower burden than corporations and large businesses pay in other states, so that was one of the factors that went into our reasoning when we were trying to come up with a rate that seemed appropriate for the State of Nevada.

**Assemblyman Kirner:**

This is not an income tax, so you would have businesses that are marginally making it in Nevada suffer, if you will.

**Richard Sims:**

It is not an income tax in that profits per se are not part of the formula, which is not unusual among business-type taxes that businesses pay on their property tax, on sales taxes they pay, and so forth. Regardless of the profit level, which leads back to the features that we were looking for of stability, broad-based and all, because profits is so flexible and it leads to incentives, which economists do not like for tax avoidance.

**Assemblyman Stewart:**

I have a two-part clarification question. First of all, if my company makes \$1,020,000, do I pay on the \$1,020,000 or do I just pay on the \$20,000? Secondly, I was on a plane the other day with a business man and he was concerned about what would be considered, his income or his profit. He said I have on my books a construction project that I finished but I have not been paid for it. As we know today sometimes these construction people get paid part or nothing. Would that be on his books as profit that he would have to pay the tax on, or not?

**Richard Sims:**

I will take the second question first. It is a receipts tax basically, so the way I understand it is until he is paid he does not have a receipt. I am not certain I am correct on that, but that is the way I would interpret it.

On your first question, on where would his rate kick in, it would be on the full amount of his gross receipts, or his margin, which again is consistent with how several states have income taxes that give a threshold that is up to a quarter million or a half million dollars or some level. You pay at one rate or at zero rate, but at that level, once you cross that, it immediately goes to the full tax rate applied back to zero dollars.

**Assemblyman Stewart:**

If I am a businessman and if I make \$999,999, just one dollar short of the million, then I am going to close down my company rather than go over and have to pay the whole thing?

**Richard Sims:**

You could do that, or you could have a sale to increase your revenue so you can overcome that, but it does become a step at that point. Again the amount is not that great. I do not think you would shut down your company, because it is not a great amount.

**Assemblyman Stewart:**

Or I would not hire someone I was planning on hiring.

**Assemblyman Grady:**

Following up on the Chairwoman's question, could you give us an idea of how many states have a margin tax, not an income tax? Do you have any idea what it costs to audit, to go through the whole process of collections, because I can see this is a whole new department within the Department of Taxation and it could be extremely expensive? Can you give us any idea the number of states with a margin tax and what it costs them to collect?

**Chairwoman Bustamante Adams:**

I wanted to let you know the Department of Taxation submitted an unsolicited fiscal note and they will go over part of your question.

**Richard Sims:**

On the first part, only Texas has a margin tax per se. There are a few states that have taxes other than a classic income tax. Washington State, and a few other states, have a business tax that in a mind-stretching sense could be something like a margin tax. They all require the same type of audit, review, and collections process that an income tax would have. They would be looking at different things, but as far as the size and scope of the state effort to administer those taxes, it would probably be similar on whatever type tax you used on that.

**Assemblyman Grady:**

But only one state, Texas, has a margin tax, which we know is not working, which would be our model.

**Richard Sims:**

We do not know it is not working. Texas seems to be doing pretty well these days. It has not hit some of its early revenue estimates, but then most of the income taxes that we have seen have not hit their estimates either, so I could not make a great call on that one way or the other.

**Gary Peck:**

I think it is important to disabuse folks of the idea that somehow what is going on in Texas is a debacle that is creating an unhealthy environment for businesses. It is quite the contrary. It has been the experience in Texas that billions of dollars have been raised; \$3.1 billion in 2007, \$4.5 billion in 2008, \$4.3 billion in 2009, and \$3.9 billion in 2010. That represents billions and billions of dollars raised during a great recession that no one could have anticipated, and Texas remains one of the most inviting states for business in the country. It is important everyone understand that, like any other tax, Texas has needed to revisit this one and recalibrate, as Mr. Sims suggested. We looked at that tax and it helped us make some judgment calls. For example, the \$1 million threshold is based on the latest recalibration in Texas. I think it is important to understand that the margin tax in Texas, whatever its flaws, like any other tax, is actually working.

**Assemblyman Hardy:**

You commented earlier about people still studying this or experimenting with it, that there is only one state that is actually doing it, and the potential impact to the state in a future downturn. Have you done any studies to see what might happen in a potential downturn to the budget, and to the teachers, their income and their budgets?

**Richard Sims:**

Yes, and that has been a major driver behind this. Following the great recession we just lived through, the corporate taxes really went through the floor in many states, and other forms of taxation collapsed. From a revenue standpoint, a margin tax tends to be far more stable than the profits tax. When you look at a tax you always have to look at it in terms of what your alternative is, and of the other types of business-paced revenue sources. We have looked at the volatility on an annual basis, in either an upturn or a downturn. It does not grow as flush in an upturn as a profits-based tax might, nor does it decline as much during a downturn, so it is much more stable. It is more dependable over the long term. It would not fall to zero overnight the way corporate profit taxes did. For example, when I was a tax administrator, the typical state saw a variability in its corporate profits tax of about 34 to 35 percent per year, up or down.



A margin tax should be very stable on a year-to-year basis, and something good for long-term planning and funding of important sources, such as education.

**Senator Brower:**

When I first read the petition some time ago it struck me as strange that this new tax would be imposed on business entities that were not making a profit. I have heard that confirmed today. My question is why are we calling it a margin tax? What is the margin? As we know in a business context we usually talk about margin in terms of a profit margin. What are we talking about here?

**Richard Sims:**

In this case you are starting with your gross receipts, your revenues, and then taking out the cost of doing business. There are a lot of things that would go into a profits tax that would change that structure. This tax is more simple in that sense, in that its base is not profits. It is not a profit margin the way a business person might use the term, the margin between, say, sales and cost of doing business, which to an economist sounds like a profit, but to an accountant it does not sound like a profit.

**Senator Brower:**

It does not sound like a profit to me either. Maybe we ought to call this the gross revenue/gross receipts tax? Using the term margin is awfully misleading and I do not think this is good for the state.

**Richard Sims:**

It is not called that because a true gross receipts tax has some other features of its own that are different. That is why I mentioned Illinois was looking at a gross receipts tax. Some other states have looked at gross receipts tax. This is more like those than it is a profits tax, but it is still different in its own way. It has its own unique classification.

**Senator Brower:**

It is unique, I will give you that.

**Gary Peck:**

I appreciate the subtleties and nuances that you are referencing. But I think it is important to remember that the Nevada Supreme Court looked at this and was specifically looking at whether or not what we had put together was in any way misleading, with respect to the description of effects that includes the term margin tax. The Court unanimously decided it was not at all misleading, people understood exactly what it was they were being asked to sign, and that it would present the opportunity for precisely the kind of debate we are having

now. To suggest that this is misleading, from my perspective at least, is somewhat misleading. That is my point of view, but I would just make note of that. I take the point.

**Senator Brower:**

This is just one senator speaking. I can tell you, and I am sure we are going to hear today, that this seems to be misleading with respect to many, many of our constituents.

**Senator Roberson:**

I am trying to get a little perspective on this. Mr. Sims I am trying to determine your role in all of this. Are you here to defend a proposal that you crafted for the benefit of Mr. Peck or were you hired after the fact to provide justification for the proposal?

**Richard Sims:**

I was not hired at all. I am with the National Education Association and we are a fellow affiliate with the Nevada Education Association. I have made my contribution as an economist in developing this tax, as well as other taxes, but I have not been hired per se at all.

**Senator Roberson:**

So you were involved in the drafting, creating, and the conceptual portion of this tax proposal?

**Richard Sims:**

I was not involved in the drafting portion. That is for the attorneys and the drafters. I have been involved with some of the conceptual portion.

**Senator Roberson:**

You are here to defend that plan today?

**Richard Sims:**

Yes.

**Senator Kihuen:**

Thank you for your presentation. I want to ask something that I would guess is on the minds of most of the Committee members. How did you come up with the \$800 million figure? Is anyone going to get into the technical part of the initiative?

**Richard Sims:**

Looking at the Texas case and seeing what they get, adjusting for the size and composition of the economy, and if there was a determination that it would hit about \$800 million. If we had a tax structure similar to that with the adjustments we have made in it, that looks like a pretty good revenue estimate.

**Chairwoman Bustamante Adams:**

If there was something we could actually have, showing how you came up with that number it would be helpful.

**Richard Sims:**

We can put that together.

**Chairwoman Bustamante Adams:**

We will now transition. I know you gentlemen are still going to be here and available to our Committee members as they have additional questions. There were also 20 questions that were posed to and answered by the group and you have them in a handout ([Exhibit C](#)).

I would now like to call to the table Mr. Martinez, Mr. Thompson, and Mr. Fulkerson. If you have written testimony please do not read it. I ask that you just submit that to our committee secretary.

**Danny L. Thompson, representing the Nevada State AFL-CIO:**

I represent the Nevada State AFL-CIO, and am a board member of the We Are Nevada Coalition. This issue has been here before and it is important to understand a little bit of tax history in this state.

In 1981, the Legislature, in its infinite wisdom, did the great tax shift that basically turned over property tax to local governments and made all these different changes in response to California passing Proposition 13 (People's Initiative to Limit Property Taxation), and there was concern that it would come here and pass. So over the years we have developed a tax system that is totally reliant on a single source. The reality is that gaming and tourism make up about half of the money that we take in. In 1981 this made sense because the only place you could legally gamble in the United States was the State of Nevada. If you gambled in New Jersey you went to prison. It was a source that was stable, predictable, and whenever there was a shortage, we just went to the gaming industry and said, "you need to give us more."

Over the years there have been adjustments up and down. If you fast-forward to today we still have that reliance on an industry that is dependent totally on disposable income, so when the great recession happened and people across

the country lost their jobs, it is no wonder that Nevada is in the shape it is today. We have the highest unemployment rate in the nation and the largest foreclosure rate in the nation. There has been a side effect that has been ignored for years. As somebody who has spent their entire life in this building, I am ashamed to talk about this because I feel partially responsible. People are always saying, "you union guys represent those teachers." I will tell you I do not represent any teachers in the State of Nevada. One of the reasons I have involved myself is this. I was here at the last Legislative session and we sat at this table and said if you do not do something about a failed tax system, then the people are going to do it. Is this the best way to do it? I do not know. Does this process lack debate and thoughtful thinking? This process? Yes. The reality is it was put before the Legislature and they chose not to act.

The reason I am embarrassed, and everyone in this room should be, is that we have the lowest graduation rate in the United States. We have the fifth largest school district in the United States in this state. When you think about school districts in New York, California, Illinois, and Florida we have the fifth largest school district, with the lowest graduation rate in the country. We have the largest secondary classroom sizes in United States.

I get a kick out of people saying, "you know, you do not solve a problem by throwing money at it." We have never thrown money at education ever in this state. We do not fund it to the national average and we are paying the price today.

We are talking about the modified business tax (MBT) and I know people are going to come up here and say "if you make me pay more, then I am going to leave the state." Well as far as I am concerned they can leave. If \$284 per employee is killing you, and only 25 percent of employers pay that, this is a disgrace.

I fully understand that this bill probably will never come to a vote. There are not the votes to pass this bill. There are not the votes to override the Governor's veto. There is no question in my mind this will go to the people to decide. I think that is where it rightfully belongs, because the Legislature has failed there.

**Chairwoman Bustamante Adams:**

Thank you for taking ownership.

**Al Martinez, representing We Are Nevada, Inc. and the Service Employees International Union Nevada, Local 1107:**

We are in support of I.P. 1, the education initiative. We Are Nevada represents more than 250,000 Nevadans, a combination of public employees, and community advocates throughout the state. Public employees and the active community stakeholders involved through our partner community groups are the very fabric of our state. [Continued to read from prepared testimony ([Exhibit D](#)).]

**Robert Fulkerson, representing the Progressive Leadership Alliance of Nevada:**

We have two choices. We can raise the revenue we need to properly fund education or we can remain on the bottom of the lists for educational outcomes and other indicators of a state that actually functions.

Our schools have been cut by \$1 billion over the past five years. [Continued to read from prepared testimony ([Exhibit E](#)).]

I hear a lot of criticism and I want to say "then what is your solution?" At least the teachers have come to the table and I applaud them for their boldness. It is time to do something bold and pass this education first initiative.

**Chairwoman Bustamante Adams:**

Could Mr. Romero, Maddi Eckert, and Lynn Warne come to the table. We will end with former Assemblyman Anderson. Those that want to still provide support for this bill can do so by the methods previously described. If you did sign in, I have that as public record.

**Fernando Romero, Regional Coordinator, Nevada, National Council of La Raza:**

I am a 46-year resident of Clark County. I am an advocate within the Hispanic community. Recently Senator Harry Reid said that for Nevada to be competitive we must adequately fund education today. I applaud the Senator's comments and agree that now is the time to solve the educational funding problem.

In 1974 I was appointed by the Clark County School District (CCSD) as chair of the Bienvenido Bilingual Education Program. Four thousand students had been identified as needing English as a second language. The population at the time was approximately 50,000. Today the Hispanic population has grown to approximately 720,000, and 68,000 students have been identified as needing English language learner (ELL) programs. In 1974 there was \$500,000 funded for English as a second language. Now there is absolutely \$0. There are no dollars for our 68,000 children who have been identified as needing ELL programs.

The Latino graduation rate is less than 50 percent in Clark County, while the average rate is 62 percent, which is still abysmal in the State of Nevada. Again, over 68,000 students have been identified in the school district, that is majority minority Latino students of 44 percent. I will not go into the special education portion.

I have an 8-year-old child in the third grade who is autistic. He is in a classroom with 27 students. For him to receive the proper education, if it was not for the great teachers that the school has, and I am talking about Lewis E. Rowe Elementary School; the help of my wife who is very dedicated to his education; and I who am very dedicated to his future, what do we see in the future for him and children like him?

I know I am rushed because of time but I do want to implore you to support the education initiative, because an investment in education today will benefit our students, our economy, the State of Nevada, and children like my son.

**Maddi Eckert, Private Citizen, Reno, Nevada:**

I am an intern at the Progressive Leadership Alliance of Nevada. I am also a junior in high school at Reno High School.

Our state was founded nearly 150 years ago. Since then we have upheld the tradition of low taxes to encourage job creation and the growth of businesses. I am 17 years old and I know that this obviously is not working anymore.

Our school system is failing nearly 500,000 students every year. That is half a million students. Students like myself. Along with the students, our system is failing the teachers, who are no longer adequately prepared to teach their students and do their jobs properly.

I am sure you have all heard the statistics. Our state ranks one of the lowest in both educational funding and educational success. Do you see a correlation between the two? Our education system is failing me and my fellow students.

You may be looking at me and wondering, "why are you even here testifying that we are failing students if you are sitting in front of the Legislature right now." I am one of the lucky ones. I am one of the students that has parents who can benefit my education and offset the detrimental effects of a poor education system. There are thousands of students out there who have not had the same opportunities as I have. Nearly 40 percent of high school students in Nevada never graduate from high school. They never have the opportunity to succeed in life.

As I said earlier, I go to Reno High School. My school is one of the better-off schools in the Washoe County School District. We have had a very wealthy alumnus who has donated to help offset the difficulties that my 62-year-old school building has had. He has been a huge help, but there is only so much that one person can do.

My AP (Advanced Placement) English class has 37 students in it. We have had to add extra desks in the room so everyone will fit. We oftentimes use textbooks that are tattered and out of date. Some classrooms still use laptops that literally take the entire class period just to start up, even though new technology is clearly available. If this is one of the nicest schools in the school district, imagine what it is like at some of the less fortunate schools.

This education tax already has the immense support of the public. One way or another a tax has to be passed to help students like myself. The people of the State of Nevada recognize that it is time to do something to help our students. Can you say the same thing about yourselves ([Exhibit F](#))?

**Chairwoman Bustamante Adams:**

I appreciate you representing the youth and participating in the process.

**Lynn Warne, President, Nevada State Education Association:**

I am the president of the Nevada State Education Association (NSEA), a fourth grade teacher in Washoe County, and a class of 1977 alumna from Reno High School.

I bring greetings and thanks from the 25,000 members of the NSEA and the over 150,000 voters who signed this petition. We want you to know that we appreciate the work you have done on this and the other important issues before you. [Continued to read from prepared testimony ([Exhibit G](#)).]

**Bernard Anderson, Private Citizen, Sparks, Nevada:**

Two hundred and forty three years ago, on the night of March 5, 1770, British soldiers at the Customs House in Boston fired into a rowdy crowd of locals, killing five people in response to being pelted with snowballs and road trash. The crowd was concerned about having a say in what should be taxed, how the taxes should be spent, and their lack of representation. [Continued to read from prepared testimony ([Exhibit H](#)).]

Transportation and facilities must be provided that are adequate, so children know that they are cared for and are safe. Funding is part of that question.

As a grandparent I want my grandsons to have a chance to take advantage of the ability to move forward in this century with its changing technological advances without the loss of participation in the arts and sports, which keep the human spirit alive, and the importance of an individual and their self-worth is clearly identified. I want what every parent and grandparent wants.

**Chairwoman Bustamante Adams:**

I want to personally thank you for your service to the Legislature and as a teacher. Even though we may have not served together we still use you as an example of best practices.

Those who are in support, and those in support in Las Vegas, I have it for the record that you are in support. There are other ways to provide your testimony and still be part of the public record without coming to the witness table.

We will now transition over to the opposition.

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

I am the director of public and government affairs for the Retail Association of Nevada (RAN). We represent 1,500 businesses in the State of Nevada, ranging from mom-and-pop independent locations to the much larger big-box stores.

I want to thank you for the opportunity to come before you and frame the conversation. Shortly you are going to hear numbers, figures, and experiences from small businesses, community banks, gas stations, and taverns, but I want to take a moment to respond to some of the comments that were made.

We agree with some of the comments that this is complex and confusing, and largely contradictory. We want to clarify as well that 150,000 people on the petition were not qualified for signature. The Secretary of State actually qualified 107,000 signatures, which is roughly 10 percent of the voting population here in Nevada. We also want to clarify that this question does not belong to the people. I think the Nevada State Education Association owns this petition and this question, to the tune of almost \$750,000 that they have spent since they first proposed it. Just to clarify, you are asking the state population to answer this question, but there is clearly no ownership.

We also find it difficult to understand how this is going to guarantee any extra education funding in Nevada. The money that is raised from this petition has to be deposited into the Distributive School Account (DSA), but does not guarantee that the Legislature has to make the policy decision to add more money into the DSA. I think we have seen examples in the last decade where



monies have been earmarked for education but have been used to solve budget holes in the General Fund.

Nevada is not Texas. The Texas margin tax is complex for a reason. That is because it is a very complex subject. The Texas tax allows for Medicaid, Medicare, and Tri-Care revenue to be deducted from your margin, as is required by the federal government. This tax does not. It would have the potential for increasing a tax or taxing that governmental revenue. Also, for retail and wholesale trade industries it is a 400 percent increase in the liability of the tax between Nevada and Texas. Texas made the policy decision to attempt to diversify their tax structure by moving away from a goods-producing-company strong tax to a services-providing tax, which is why they allowed for a 50 percent deduction in the rate that retailers and wholesalers pay in Texas.

I am happy to be a product of the CCSD. My wife teaches geometry at Mojave High School, the high school I graduated from. It is consistently the worst-performing high school in the State of Nevada, located in North Las Vegas. I knew then, and I know certainly now from her experiences, what can happen when we give the correct tools to teachers.

In a recent poll conducted by the retail association we asked parents, as well as other voters, to identify their top priorities when it comes to education spending. It was class-size reduction and increasing teacher's salaries. They are very specific about where they want their money to go. This tax does not guarantee any of that extra funding.

We in the business community, especially the retail association, were confused where the 2 percent number came from when it was created and written into the petition. We now have that answer. It was the amount of revenue the NSEA wanted. The calculation was done backwards. Based on their figures, they wanted almost \$2 billion or \$1.6 billion in extra revenue. It was then calculated backwards to find the 2 percent rate in Nevada.

This is unlike any other tax in the country, and it would actually make Nevada less competitive in terms of tax liability on companies. It was pointed out that one of the pros of this tax was that it minimized tax planning on corporations. To us this is a fallacy. It is difficult for businesses to be able to understand and operate, because tax planning is important. As a business you have to be able to determine what payroll you can sustain, what your hours will be, how big a store you can have, and what your inventory is going to look like, and taxes have to be a part of that conversation. Currently, Nevada has the MBT, which does allow a business to understand what their liability is going to be.

I think another fallacy that was brought up during the testimony was that this would somehow extend the base, or provide us more economic diversity when it comes to who we are taxing. It is my knowledge that this tax actually does not tax anyone who is not already subject to or has been excluded by this legislative body on the MBT. Nongaming revenue is subject to this tax, as well as all business types, wholesale and retail, health, and trucking. Everything is expanded, so we find it difficult to believe that this increases that diversification.

In the 29 days that we have been here in the Legislative Session we have also heard different exemption requests, credit requests, and abatement requests from companies looking to move to Nevada. One of the strong reasons during that testimony was that the tax structure in Nevada, or the tax liability, was too high. If we simply lowered it or provided a credit for that tax system, regardless of the fact that we did not have the skilled workforce in Nevada to be able to support this industry, they would come here anyway and train those folks, and they would be able to provide that labor force. It was specifically because Louisiana, Michigan, or other states provided this tax exemption that they were unable or unwilling to move to Nevada.

I think when you allow those types of conversations, or those types of exemptions, you are implicitly implying that taxes do play a role in whether or not a company chooses to move to Nevada. So I think it is another fallacy to make the determination that taxes do not play a role in that conversation.

This tax is also different from the Texas tax, and actually similar, in the fact that the federal government has different definitions of income and revenue and different deductions. It is not as easy as pulling your federal tax return and simply looking at the deductions that Nevada will allow, which is cost of goods sold, compensation, or 70 percent of your revenue. Different books must be kept. Different accounting practices must be kept. It is also unclear how the state would allow a company that operates in multiple states or multiple jurisdictions to apportion their sales specifically in Nevada. It is complex and difficult. Texas has had an income tax, or a franchise tax, or a version of it since the early 1800s. They simply modified their tax in order to look at their economy, which makes it easier for a business to look at "we are paying this, this new MBT or this new gross receipt tax is going to change our bottom line in such a way," and a business can anticipate that. Here in Nevada we do not have that. We have an MBT, which is as broad-based a tax in Nevada as the margin tax that is being proposed. You would have in some cases almost a 438 percent increase in tax liability from the MBT to this gross receipts tax.

I think it is important to note as well that this tax does not replace any of Nevada's current taxes. This is in addition to your payroll tax. You will still pay your property tax, and then you would also pay a gross receipts tax.

As I said before, RAN conducted a poll and I want to share some of those responses. Despite widely reported accounts that the recent poll accomplished showed huge success in establishing a margin tax, or huge support for it, it simply is not true. Nevadans are quite concerned about any measure that will threaten our fragile economic recovery and future jobs. Imposing a margin tax on businesses here certainly has the potential to do that. You are pulling \$1.6 billion out of the current private economy and moving it into the government.

I appreciate your time. I hope you look forward to listening to the small businesses, the businesses that are going to be paying this tax, so I hope you find it valuable ([Exhibit I](#)).

**Assemblywoman Neal:**

Talk to me about the framework in sections 24 and 25, which clearly gives a lot of leeway, a lot of exemptions, and an election to exempt more.

**Chairwoman Bustamante Adams:**

I want to make sure there is a clear understanding before you answer Assemblywoman Neal's question. Those exemptions do not happen simultaneously. You have to pick which one you want.

**Bryan Wachter:**

I appreciate the question. I think it outlines how complex this particular tax is, and how where the proponents of the bill borrowed this language from, which was Texas, accounts for the ability to tax different industries and different business situations differently.

If you can find the good in a very bad situation, the ability for a business to identify an exemption or two that they could then deduct from their overall margin is important. I think you get into a worse situation every time you apply a blanket rate to the tax. As a business that is able to then look at any of the multiple exemptions starting from line 18 of page 9 and going to line 24 of page 10, we appreciate the little bit of leeway we are given. At a 2 percent rate I do not believe it is enough leeway to allow a business to be able to individualize their experience to be able to make the best decisions that they can make.

**Senator Kihuen:**

You work with businesses every day. In your opinion what is the most significant thing that businesses look for in a state when they want to relocate to the State of Nevada? We talk about economic diversification and how making a proper investment in education is going to help us diversify the economy. What is that significant thing that businesses look for in a state, and would you be in agreement, just by listening to your testimony, that we do need more funding for education here in the State of Nevada?

**Bryan Wachter:**

On the education funding issue I believe that we need to take a look at what programs this legislative body wants to fund. I think we have heard in the last couple of weeks \$300 million or so in projects. Whether it be ELL or class-size reduction, I think we are taking a look at those steps. We are ending social promotion. I am not sure that it would be appropriate to make a blanket statement that Nevada needs half a billion dollars, \$1.5 billion, or \$1.6 billion to adequately fund education. I think we need to take a look at what we think could make education better. What is the goal? Is the goal to increase the graduation rate? Is the goal to make sure everybody goes to a four-year university? I think we need to look at those goals.

**Senator Kihuen:**

Would you think that we are appropriately funding it at the current level?

**Bryan Wachter:**

One of the questions that RAN asked in a poll to Nevadans was, "do you think that Nevada should spend more on education or do you think Nevada needs to reform its education system?" Seventy-two percent of those who were polled said that reforms were more important than increasing state spending to education. Before we can answer the spending question, according to our poll, Nevadans need to be convinced that we have done all we can with the available resources we have before we look at additional spending.

**Senator Kihuen:**

What is that most significant thing that businesses look for in the state?

**Bryan Wachter:**

I can only speak to retail. We are looking at consumers. Where we are a goods-driven industry we are looking to make sure that people are available to buy our goods and that there is a market for that.

It is becoming increasingly difficult with online purchasing, with multiple jurisdictions, and the fact that people can make purchases without having to go next door to a local retailer. We are looking at consumers. We also have lots of extensive training programs for our businesses. When you come in there are always orientations and training. I am not sure I can look and say this is the most important, consumers, education, tax structure; I think everything plays an important role in making that determination. I think it is a fallacy to determine one particular issue is most important and then try to tailor a policy toward that.

**Senator Smith:**

I want to go back to the first question about education funding. You mentioned class size. I am assuming you would acknowledge that aside from everything else, class size was the number one concern in that poll, and the only way you can improve class size is through funding. It is really about having more teachers to get class sizes down. That piece of it I think we can agree on?

**Bryan Wachter:**

I think my wife's smallest class at Mojave High School is 42 kids. At the beginning of the school year it was 54 and I could never find any of her time because she was always grading papers.

If we have identified we want to do something, and the studies and teachers have shown, and this body has kind of deliberated, that class-size reduction is the most important, then we need to take a look at the spending levels that we are doing for other projects. I do not think you get class size reduction in addition to ELL, prekindergarten, or full-day kindergarten. You have to prioritize. I think it was apparent in our poll that Nevadans have done that. They are looking for that leadership, and for the Legislature to do that as well.

**Senator Smith:**

I would be really happy to reduce class sizes as our number one priority, as the poll indicates, but the only way reducing class size happens is through funding.

**Chairwoman Bustamante Adams:**

I will ask the others who come up to testify to please not feel the need to repeat or to read your testimony. We are going to lose the feed in Las Vegas, so I would like to call those to the table in Las Vegas while we are hearing from our next group of testifiers.

**William Uffelman, representing the Nevada Bankers Association:**

I am president and chief operating officer of the Nevada Bankers Association. On Nevada Electronic Legislative Information System (NELIS) you will find documents I prepared.

One is the impact of taxes and fees on an industry ([Exhibit J](#)). In 2003 this Legislature painted a target on the back of the financial services industry. This document reflects the branch bank excise tax that is in excess of \$3 million per year for having branches. The MBT on payroll is 2 percent for banks. The credit unions are exempt from these fees, as they are exempt from federal taxation.

In addition to the money the banks put into the system, we have the Community Reinvestment Act. We have financial literacy courses we actually teach in the public schools, so we are putting more than just money into the program.

If you pass this, it raises the tax in the first fiscal year from 2 percent to 2.29 percent, and that continues for the second year. This 14.5 percent increase in the tax will raise almost \$6.4 million to fund the start-up costs of the taxation department, so they can then impose the 2 percent margin tax on the rest of the businesses ([Exhibit K](#)). If you do not pass this measure, and I sincerely hope you do not, and if the voters of the state pass it, in year 1 after passage, taxes on financial institutions will be raised 21 percent on the payroll tax to fund the start-up costs.

I went through the Federal Deposit Insurance Corporation (FDIC) end of fiscal year reporting to see where the Nevada state charter banks are at. Many of them, several of them, are losing money. They are not making a profit. Some would still pay the tax. It is literally an allocation. How much interest income did they have and how big is payroll. That situation will continue until this economy truly does turn around, or until the smaller banks are subsumed by somebody else.

I thought about what banks to invite. I settled on Stan Wilmoth's bank, because he is my current chairman, and his bank is located up here in the north. I thought he was fair game as his bank actually made money.

**Stan Wilmoth, President and Chief Executive Officer, Heritage Bank of Nevada:**

We are a \$500 million bank in Nevada. We are owned by 330 shareholders who live and work in northern Nevada.

I am not here to talk against education. I am amazed at what educators do. I have never seen an industry where their employees, teachers, give up 5 percent of their salary to make it better for their constituents, the students. If I asked people at the bank to give up 5 percent of their salary to make it better for the customers they would say "get another idea."

This tax is not a way to get that done. I am appalled that the architects of this legislation do not know the effects of the legislation on small business. Assemblyman Stewart asked the question of a copassenger on a plane wanting to know how it would affect his taxes, and by the way Assemblyman Stewart if he had bad debt it would come off of that, as my example shows you ([Exhibit L](#)).

At Heritage Bank the tax would equate down to about \$250,000, or about an 8 percent profits tax, on net profit of the bank. You can see that it is not just a 2 percent gross tax.

What I am really here to talk about today is more than that, what it is going to cost us. What is it going to cost the 1,700 small businesses that bank with me? I have watched them over the last seven years be stressed by this last economic cycle. It has been horrible. Their assets have been compressed. Their liquidity has poured right back into the business to make it better for their employees. There have been divorces because of the stress, and now we are going to put this on top of those small businesses. Businesses that may not even be profitable and we are going to tax them. I cannot even believe we would consider that. For a company that would not make money, that is pouring money back into those companies from their own personal assets, we would tax that.

By the time we pay the FDIC, the MBT, and the branch tax, we are at about 41 percent tax in the State of Nevada.

**Assemblyman Horne:**

Just for clarification, Mr. Uffelman. I believe there are four of us who were here in that 2003 Session. I think it is a mischaracterization to say that the financial industry was painted with a target on its back. While I may have only been a freshman then, what I remember was there had been a whole lot of different plans out there and every single plan kept getting blown up toward the end. Your industry added to that chaos. You may have lost in the scrum but you were there.

I invite you to be at the table this time and when you come do not come with just no. I want to hear some options. I want to hear options from everybody. I do not want to hear that this is terrible. I want to hear this is terrible but this might be better. That would be a great way to start.

**William Uffelman:**

I was not here in 2003. I came in 2004. It was always portrayed to me as having a target painted on their backs, to the extent that we paid a 2 percent payroll tax versus the rates that others have paid, paid the branch tax, and also now pay a notice of default tax. It is different than what other people pay.

As to funding education, my father was a professor of education. I come from an education family. One of my sons is a teacher and my daughter-in-law is a teacher. I have a concern about how the money that is in Clark County is allocated. What is it used for? If you prioritize, resolve, and if class-size reduction is number one, do those things first. Then see where we are and find out what additional revenue we need, how we raise that, and how we raise that equitably. I do not want to raise revenue from businesses that are not making money. I have said that every time I have been here.

**Chairwoman Bustamante Adams:**

I think the key point, Mr. Uffelman, is that it is an invitation by Assemblyman Horne.

**Bob Linden, President, Shred-it Las Vegas:**

I own Shred-it Las Vegas. We have been in business 14 years and have 14 employees. We do document and computer hard drive destruction for many businesses in the valley. I am a very strong advocate for education. I support an appropriate tax structure for education. The last time I was in this room two years ago, at the end of the last session, I testified that I did not want my taxes to go down with some of the taxes that were set to expire under sunset laws. I was supportive of the Governor's proposal to maintain those for the next two years, given the acute situation. I provide this as background. I am committed to education and committed to funding for education.

As a small business owner I have very significant concerns about this margin tax that is currently being discussed.

I take great pride in having a good set of benefits for my employees, such as 401k matching and health insurance. We opened 14 years ago as a very small company. Two years ago I added disability insurance because we did not have it, to provide that extra umbrella should their partner be without work.



The challenge here is this. A tax that could potentially tax a business not even making money is pretty unacceptable to me. It creates great fear and concern. We have sequestration going on, and the impact of that that might happen, on many small businesses providing services and goods to the Nellis Air Force Base, and then to have this large cloud hanging over is a very significant concern.

There is absolutely no question that any investment a business owner makes has risks with it. The goal is to grow the business and provide better service. When you have this cloud hanging over you, and end up paying even though you are not profitable, it makes it quite untenable. The economic situation of the last five to seven years has been tough on lots of small businesses, with major stress and major challenges. In 2011 we had to make some changes and cutbacks. I talked to the team. Do we lay somebody off or do we do a salary reduction? We actually did a salary reduction to maintain a bottom line in the company so that we are here in 2012, 2013, and beyond.

Most of our customers are businesses. Many of them are small businesses, but some are very large businesses. In 2012, 43 of our customers closed the door and went out of business. That is significant. That is right here in Clark County, the primary area we provide services to. We took steps to make sure we were never going to be one of those businesses going out, but we are not out of the recession yet. Every single day we have many challenges. I meet with a lot of business owners. It is very tough making payroll and so forth, so to have a tax laid on top of that creates some paralysis in terms of future investment, and the things that people need to do to their business and help our economy return ([Exhibit M](#)).

**Gary Ackerman, Owner, Gaudin Automotive Group, Las Vegas:**

I am chairman of the Gaudin Automotive Group of dealerships here in Clark County. I am currently president of the Nevada Franchised Auto Dealers Association. I have been a resident of Clark County since 1955. I and all three of my children are products of the CCSD. I am very proud of that.

I am here today as a Nevadan and a business person to show my concern for the direction of this tax. I am not here not to support education. Throughout my career and my family's history we are about to celebrate 90 years in the Ford business. We have always been huge supporters of public education and remain so today.

I am here to state my opinion that this is the wrong course of action for our state to take to support education. It is not about whether education is worth

supporting. It is about a prudent, fair, and very well spread source of revenue if one is proven to be necessary.

As a business owner, when we identify an issue that needs to be addressed, we do not just go out and try to raise extra revenue to throw at the problem. We try and figure out what the source of the problem is. I would agree with Senator Smith when she said class size is the number one issue. It is a huge issue with everybody I know. That does not mean create a tax to solve it. Funding is connected to the problem, but the waste of funding is easily just as big a concern of mine as going out and creating revenue by taxes. Federal taxes are going up all around us. Our taxes have gone up. In the last seven years I have laid off 50 percent of my employees, most of whom I have known all my life. I have suffered a 50 percent reduction in our revenue due to the recession. We have all gone through that, all small businesses, and now is just not the time to be burdening our industry and other industries with additional taxes. It makes no sense to me as a citizen to take jobs out of the private sector by taxing businesses to potentially create jobs in the government sector. All we have to do is look across the border to the State of California to see how well that works.

I would urge the Legislature to study this problem, the problem of school size not a lack of business taxes in the State of Nevada. There are a lot of businesses looking to come back into the State of Nevada. The quickest way I can think of for us to tell them to look in a different state is to come up with a targeted business tax.

If our costs go up, you are talking about 2 percent of revenue. Two percent on a business like ours, that deals in very expensive items at low volumes, has a completely different effect than a business that may have very cheap goods but sells them in very high volume. As one of the constituents already mentioned, I do not know what the cost would be just to manage this complex bill were it to be passed.

One of the things that you need to consider for businesses like myself in the retail world, with the advent of the Internet, if I am \$100 uncompetitive on a \$50,000 car my customer can get on the Internet and a dealer from another state will deliver that car to him for \$100 less. You get no tax on that revenue, because it is in another state.

I urge you to be very prudent about what is going on in the State of Nevada, what has been going on for the last 7 years, and the dramatic effect something

like this bill would have on businesses struggling to survive and start to grow again.

**Tyler Corder, Chief Financial Officer, Findlay Automotive Group:**

We operate in four states but are headquartered in Henderson, Nevada. We operate 16 automobile dealerships and employ approximately 1,100 people in the state. I do not know this for a fact, but I think collectively our dealerships represent one of the largest generators of sales tax revenue in the state, and we have been in business here for some 50 years. Like everyone else we support education, but I want to talk specifically a little bit about our business.

The auto business, as we all know, has gone through a tremendous decline. I could drive you around the Las Vegas area and show you 16 empty facilities that five years ago housed new car dealerships, so we are very challenged. The problem with the margin tax is it is flawed in the way it is structured, because businesses deal in net profit not in gross margins. So if I have a margin that represents a certain amount of money, but out of that I have to take all of our expenses for rent, advertising, interest, and personnel, I may end up with a net loss, and in fact in some cases that is what we have. So this margin tax would end up being more than 100 percent of an income tax in some states. Like Mr. Ackerman said, this is a very competitive business and we do not have the option to raise prices to try to recoup that revenue. The only option is to lessen expenses.

When we went through the recent downturn, the number one expense that we could reduce in the auto business was personnel. We eliminated more than 400 employees in our organization to remain in business during the downturn. I see the margin tax having a very similar impact on us. The issue is, of course, that it is assessed whether you are making money or not. Of our 16 dealerships, three of them did not make money in 2012. In that case what would my reaction be to the margin tax? Well it is pretty simple. If I am losing money already, and now I have to pay hundreds of thousands of additional dollars, I am going to close those three relocations. I know that sounds harsh but I am in a business to make a profit. If we are unable to generate the money to pay the tax, those businesses go out of business. In our case those three locations would represent a loss of 98 employees.

I also have three other stores that were marginally profitable, but the margin tax by my calculation would make them unprofitable. I either have to eliminate employees to try to recuperate that or close those operations that employ another 105 people.

We also have part of our business headquartered in Nevada, but there is no reason it needs to be in Nevada. All of our accounting functions and revenue we put toward our computer systems, training, and property management could be moved to another state. It is not that we would do that, but it is an evaluation we, and every other business, would make. Do we need to be in the State of Nevada and could we move out of state at the expense of additional lost jobs here?

So, as a businessman, you are forced to make decisions based on the allocation of capital and the potential for return of investment. If the government reduces your potential to generate an acceptable return then you limit the capital that gets invested and you limit the employees that get hired. In my humble opinion the certain loss of jobs in the private sector as a result of a margin tax would certainly be devastating to those employees, but would also be harmful for the State of Nevada. I would certainly encourage you to seek other alternatives to what I see has a flawed tax and a very short-sided, ill-conceived tax. I think it will have long-term negative effects for our state economy ([Exhibit N](#)).

**Assemblywoman Kirkpatrick:**

Mine is not so much a question as a request for some information and further discussion. I was feeling frustrated when you were saying what a horrible place our state is, how education really does not matter, and how your businesses are going to go bankrupt and leave. I believe you have been here for a very long time and it was a little disappointing to hear that our state is just in such horrific condition that you do not want to participate. I think that you were trying to bring it back at the end.

**Tyler Corder:**

We are trying to make a point.

**Assemblywoman Kirkpatrick:**

I am trying to make a point to you as well. We agreed to have this discussion from day 1. We all decided, in a bipartisan matter, that we were going to have a discussion. This is the first time that I have ever seen or heard from any group in southern Nevada that does not like anything about southern Nevada, which is disappointing. What I would ask is what taxes do you pay? Please get me that information. How long have you been here and how do we help you move those three businesses out of state?

**Chairwoman Bustamante Adams:**

We are going to switch back to Carson City.

**James Wadhams, representing the Nevada Hospital Association and the American Insurance Association:**

Mr. Welch with the Nevada Hospital Association could not be here. He appears in opposition simply because of the process of creating taxation by initiative. As many of you know, Mr. Welch has appeared in support of other taxes in other sessions. Those were legislative bills. His opposition is based upon the initiative process.

The second client I would like to represent is the American Insurance Association, a trade association of property and casualty insurance companies. I would simply point out once again the initiative petition may have some issues, particularly in section 73, effectively placing a tax upon a tax. As many of you in this Committee may know, an insurance premium tax is built into the price of insurance so it would be considered part of the revenues under this bill. In section 73 and section 78 there is imposed upon the total revenues, including the tax revenue, an additional tax. I think that is an issue that may be problematic later.

My two clients are opposed to the initiative process and prefer the legislative process.

**Terry Graves, representing the Henderson Chamber of Commerce:**

When the economy went down starting in 2007, the Henderson Chamber of Commerce lost about 400 members. The significance that I would like to make of that is that these members did not simply drop to save the expense of dues. Most of them actually went out of business. We feel like this tax, as has been previously stated, does not help small business in any way. Businesses are also dealing with increasing license fees, unemployment tax, and unemployment compensation tax, so it is not just this tax they are trying to deal with today. They have all these other fees that are being increased.

When I arrived, the City of Henderson had about 18,000 people. Today it has grown to the second largest city in the state, at about 270,000 people. In that they have done a lot of economic development of course.

The point I wanted to make is that I believe economic development is impacted by proposed taxes. We have been disappointed by our economic development efforts in the past few years, but we have had a threat of new taxes. This is just one of them. I would just suggest to the Committee that the threat of these taxes is as detrimental to economic development as actually having the tax in place.

**Tray Abney, representing the Chamber of Commerce of Reno, Sparks, and Northern Nevada:**

We applaud this Legislature for having the conversation this early in a bipartisan fashion. We are barely into March and already talking about these things. Frankly that is the way the process should be had.

We are under no belief that God created Nevada, he then created the tax structures we have, and therefore we should never talk about what is currently in place. We should always be willing to talk about our tax structure, and anything else, if there is a better way to do something.

We have already heard today that the best tax is low, broad-based, and easy to comply with. I would submit to you the measure before you today meets none of these tests. The Chamber has always been willing to have a conversation about revenue, as long as they are coupled with reforms. You have heard that plenty of times from seasoned lobbyists in the past couple of sessions. We have, in fact, been before this Committee this session on needed revenue for education purposes.

We believe that education, mental health, and other priorities are important and all of us need to pay for them. All of us need to have skin in the game, not specific companies or specific customers of those companies.

Mr. Graves talked about economic development. We do not encourage job creation by taxing small family businesses that may have lost money. There is a lot of talk on both sides of the aisle about the MBT being a job killer. I have heard that term thrown around a lot. I can tell you that at least with the MBT, if you know your payroll you know exactly what you are going to owe. With the margin tax you may not have any idea what you are going to owe at the end of the year. You may, in fact, have lost money and still owe that tax.

**Brian McAnallen, representing the Las Vegas Metro Chamber of Commerce:**

I represent 6,000 businesses and 230,000 employees in southern Nevada. We are here today to tell you that we believe I.P. 1 is not the right solution for this state. We have believed that since it was written, and have continued to believe that up until this point. We would rather see tax policy set by the Legislature, not on the ballot and not by initiative. That has been a cornerstone principle that we have always had. We think that this policy is based on bad public policy that has failed in Texas. It has not brought in the revenues that it was projected to. The experiment suggested in the first testimony, continuing in this state, will not produce the results you are looking for. The Assembly Taxation Committee and the Senate Revenue and Economic Development

Committee have done a fantastic job of outlining the tax issues in the first three to four weeks of this session. We think that you have crafted the right direction in bringing this dialogue early on and reviewing these line by line. That is exactly what should happen. We should allow the Legislature to enact the tax policy and determine the course of this state, not the ballot and not having an initiative written by those who are not tax-policy professionals.

We would encourage you to continue these dialogues. I think the suggestion that we ought to look at other issues is exactly what we ought to do. The Las Vegas Metro Chamber of Commerce has communicated that to your leadership and we are ready to have those conversations and look at other options. Initiative Petition 1 is not the answer.

**Assemblywoman Pierce:**

You did not like the gross receipts tax in 2003. You have not liked anything in all the terms I have been here. You guys have not liked anything in the quarter of a century that I have lived in this state. You do not like any taxes that you or anybody you know has to pay. So what is the solution? We were going to get to this day. Sooner or later the people of the state were going to run out of patience. If you did not think we were going to get here then maybe you should be talking to somebody besides just you and your little circle of friends. I am telling you come election night 2014 you are all going to be sitting there looking like Karl Rove looked last election night, saying "gee I did not know that was going to happen," and January 1, 2015, this becomes law and you will have nobody to blame but yourselves, because all you ever say is no.

**Brian McAnallen:**

You warned me about this conversation when we were at Trader Joe's buying produce. We had an hour-long conversation on this very topic. I am not surprised.

For the record I was not representing the Las Vegas Chamber of Commerce in 2003. I can tell you that this organization that I represent today is willing to have conversations about moving this state forward and about funding education. Initiative Petition 1 is not about education policy. It is a bad tax policy. We are not the organization that was in front of you five years ago, or even six years ago, on these issues. I am happy to have those conversations.

**Terry Graves:**

I just want to make the record straight that we did pass an \$800 million tax package in 2003. I think in 2005 that was over-collected by some \$300 to \$600 million. The reason it has not performed in the last few years is because

the economy is bad. To expect tax revenues to continue in a bad economy is a little shortsighted also.

**Paul J. Enos, representing the Nevada Trucking Association:**

We are here today in opposition of I.P. 1, specifically for some concerns we have with its disparate impact to different industries, including the trucking industry. Not just in comparison with what trucking would pay. Mr. Sims talked about the 2 percent statutory rate. That 2 percent seems low, but really what we have to consider is the effective rate. When you look at trucking companies across the board our margins are very low. We are a very competitive industry. The industry average for a trucking company margin is about 3 percent. If you deduct 30 percent off the top of the 1.4 percent tax, and we do not have a cost of goods sold, you would look at total compensation. The 30 percent that you take off the top would amount to 46.6 percent tax on the profits of a trucking company, and that is the industry average. It runs the gamut. There are some trucking companies that do not make any money, or are unprofitable. You could see that rate go up into the hundreds of percent.

There are also some other things I would like to talk about that would be taxable that are not taxable today. The costs of our permits and our fuel surcharge, those are costs we try to recuperate from our customers that we will not be able to under this. There are apportionment issues. There are pyramiding issues.

To answer Assemblywoman Pierce's question, we do support the MBT. We do believe that the best thing to keep businesses here, and what businesses look for, is stability. Mr. Graves is absolutely correct that there is no tax that is stable in a bad economy. When you look at different tax structures and different schemes that we have come up with I think we did a pretty good job in 2003 with the MBT. That is one we support. It is simple. It is easy. That is the only tax I do myself. I do not send it to my accountant, because I can do it with a couple calculations on a piece of paper. We do not support the complex, disparate, unfair tax that is contained in I.P. 1.

I have Mr. Ed Meyer with Nevcal Trucking and Mr. Dan Allen with ITS Logistics who can speak to the specific impact on their businesses that this would have if this measure were to pass.



**Ed Meyer, President, Nevcal Trucking, Sparks:**

One of the things that people are not taking into consideration is the Nevada businesses that support Nevada business. All my suppliers and vendors are also going to get this tax. There is going to be a multiplier effect as they pass their costs on, all the way down to the consumer. I will have to raise my rates, as we try to do economic diversification, because most of my business is between the port of Oakland and the warehousing industry up here. There is a point where the warehousing will go back to California because it will be cheaper. In a lot of cases it is a close decision right now. If you add this tax, and of course they are going to have to somehow pay this tax, I see it driving a lot of businesses away and possibly putting me out of business.

**Daniel Allen, Chief Financial Officer, ITS Logistics, Sparks:**

I can repeat a lot of what has been said. We are a Sparks-based business. We have been around for 13 years. I have two partners. We grew up here. We are native Nevadans. We went through the school system here and graduated from the University of Nevada, Reno. I think the education that I and the three children I raised in this community received has been fantastic. I have three sisters who are teachers. I have a wife who is a teacher. I have a brother who is a teacher. This is not about whether or not businesses support education. We support it wholeheartedly. What we do not support is a tax like the margin tax.

It is not about whether we would move out of state or stay in state, it is "could we weather it financially." This margin tax is not fairly applied to businesses. I support finding sources of revenue and fixing the state tax problem.

In an industry where we strive for a 5 percent return net, and most of our colleagues obtain 3 percent at best, if you tax me 1.4 percent, if I take 70 percent of the 2 percent, you are talking about 40 percent of my net earnings. There is no way to compete in this industry at 40 percent. My competitors, primarily based in Arizona, enjoy a 7 percent net tax on profits.

Again I support the conversation and I implore this Committee and the Legislature to help craft a solution to fund our schools properly, cut where possible, and apply any sort of tax fairly. We do support the MBT. We are behind the extension of the rate at 1.17 and expect it to continue in the future. I am happy to pay it every single quarter I write a check.

**Ed Meyer:**

I was in the flood of 1997. I lost over \$2 million that year. I still would have had to pay this tax.

**Mike Olsen, Owner, Sagehill Dairy, Fallon:**

I am a local dairyman in Fallon, Nevada. My family has been milking cows here in Nevada every single day for the last 98 years.

My family farm in Fallon is a 500-cow dairy. I know 500 cows sounds like a lot of cows but the average size of a dairy in Nevada is 700 cows. All the work done on that farm is done by my brother, myself, and one of our five great employees. We make a living each and every day with water, sunshine, and the cows God gave us. I want to tell you a little bit about how this would affect my individual business.

Last year was about an average year in the dairy business. Our farm had \$2.4 million in total sales. That sounds like a big number, \$2.4 million for 500 cows. The problem is we had \$2.5 million in expenses, mainly due to high feed prices. This would leave me paying \$48,000 if this gross revenue tax was put forth. This money is not available. I was not even profitable.

Since my dairy experience in 2006, and partnership with my brother, out of those years three of them have been profitable, however each year I would have had to pay \$48,000 to \$60,000 in taxes. This will not work. We cannot sustain this tax. This tax would make milking cows in Nevada impossible. I would have to eliminate 30 percent of my workforce. This is not sustainable. This tax would be the end of the 100-year history of Olsens milking cows here in Nevada.

Mr. Sims alluded to the fact that businesses would just pass the cost on to the consumers. In the dairy business the money received from a dairy farmer is what the milk market demands and that is it. We cannot pass on a cost to the consumer. The bad part is the proposal of this tax could not have come at a worse time. I belong to a dairy cooperative called Dairy Farmers of America (DFA). Dairy Farmers of America are composed of 15,000 members just like myself. The good news is that DFA is building a plant in Fallon for our milk. Eighty-five million dollars is being pumped directly into the local economy. It is going to be the only plant like it in the western hemisphere, with the ability to take our milk and ship it to any country in the globe. There is a huge demand for this product. This under construction plant, like I said, will be boosting \$85 million into the local economy. In addition, when completed it will provide 45 quality full-time jobs and 800 to 1,100 additional jobs into the local region. This was done by a study with UNR.

This plant brings a huge demand for milk in Nevada. We cannot come up with the demand ourselves. We are going to need out-of-state dairy farmers to come

in and help us with this demand. With this tax going forward it will be absolutely impossible to track that milk supply. Those are a lot of good quality jobs that will not be created in Nevada.

I cannot stress enough the negative effect of this tax on the sustainability of our individual farms. We are not large corporate businesses. We are just families trying to make a living. I promise you the money is not there. I urge this Committee to deny the passage of any tax (Exhibit O).

**Chairwoman Bustamante Adams:**

Thank you Mr. Olsen. How do you feel about the MBT?

**Mike Olsen:**

We are in favor of it and we would continue to pay it. It makes sense. We are going to base it off of profits and not just gross revenue. Like I said, out of the last six years, three of those years I could not sustain a profit, and I am going to be paying a 2 percent tax? This is crazy. This is recklessness.

**Assemblyman Grady:**

Is it true that the milk plant that is being built now could double the amount of your herd, not only in Fallon but around the area, which would put more people to work to supply this dairy, and could be a booming business for the small community of Fallon?

**Mike Olsen:**

Absolutely. The great thing is we are bringing money from overseas. Where it is ending up is directly in Nevada. Like I said we need to double the current milk supply just to open the doors on this plant. After that it is going to have the mere capability to double that again in size. From door open, day 1, it can be four-fold. The demand is there. We think buying milk is going to the store, getting a jug of milk, bringing it home, and putting it in the refrigerator. In developing countries like China, where their increased wages have allowed them an appetite for these high-quality milk proteins, people have to buy milk every day. Four out of five homes in China do not have refrigeration. The demand in China alone is matched by the demand of the nine countries surrounding them in the Asian belt. This demand right now is being supplied somewhat by New Zealand. They supply 98 percent of the product. China, however, is looking directly at us and they say they want this milk supply. If we give this up, the dairy industry in Fallon is over.

**Chairwoman Bustamante Adams:**

Thank you, Mr. Olsen, and I appreciate your representing the rural community. We will now move into the neutral position.

**Chris Nielsen, Executive Director, Department of Taxation:**

I have with me here today Sumiko Maser, deputy executive director. I am going to give an overview of what the fiscal note entails ([Exhibit P](#)). First off, with respect to revenue, we have no way of commenting on whether the estimates are accurate or not. We currently do not capture the information necessary to weigh in on any revenue estimates.

The implementation costs for the fiscal year we estimate to be \$2.8 million and the second fiscal year to be \$2.7 million, for a total of \$5.5 million in so-called implementation costs. I have broken down \$3.2 million related to personnel costs. This would be 40 new positions within the Department of Taxation in the first two fiscal years. There would be \$187,000 for operating expenses. This is primarily attributable to the need for additional office space. There would be approximately \$300,000 needed for new equipment, including desks, telephones, et cetera. The second largest category of cost, with respect to the first two fiscal years, is \$1.94 million for information technology (IT) costs. This is primarily attributable to the need to do certain IT programming, with respect to our computer system. We would have to go out and contract with a third-party vendor to perform those services.

Future biennia is when we would have the need to bring on auditors. We anticipate the ongoing future biennia costs to be approximately \$12.1 million, of which \$10.3 million is attributable to personnel. This would include an additional 33 positions, for a total of 73 new employees at the Department of Taxation. This amount would include the need to hire approximately 27 new agents. I use the word agents purposefully. We currently have auditors. We believe we would need a higher level worker with different skills to implement this tax type, namely licensed certified public accountants or those eligible to sit for the CPA exam. Among my audit staff some have accounting and/or CPA educational backgrounds, but we do not have the need to hire CPAs to perform our current audit program.

Some other additional costs in the future biennia would be about \$700,000 in operating costs, \$132,000 in equipment, and \$182,000 in ongoing IT expenses. This is attributable to licensing fees and maintenance of the system.

In summary, the Department of Taxation would need approximately 73 new employees, or an increase of about 24 percent from our current staff of 329 employees. Our department's biennial budget, at least in audit years, would grow by approximately 22 percent.

**Chairwoman Bustamante Adams:**

Assemblyman Grady, did that answer the question you were asking?

**Assemblyman Grady:**

Yes.

**Chairwoman Bustamante Adams:**

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

**Mike Patterson, representing the Lutheran Advocacy Ministry of Nevada and the Religious Alliance in Nevada:**

We are technically neutral on this because, unlike you with a two-thirds vote on this, we require a unanimous vote and we could not come to one. The board did say that we needed to do something about education. I would like to remind you of what Senator Raggio used to say, that first you need to look at what you want to do and then you find a way of doing it. You have all heard everybody agreeing that our class sizes are too big. You heard the young lady who eloquently spoke about 35 students in her room. As a former teacher that is just impossible. We really ask you to look at the needs of the state, and then find the money to fund it. I know that both sides of the aisle have conflicting views on taxes, but we need to find a way.

**Chairwoman Bustamante Adams:**

We will now take public comment. Is there anyone in Las Vegas who would like to provide public comment? [There was no one.] Is there anyone in Carson City who would like to provide public comment?

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

I was hoping to speak to the bill and a couple of major problems with it. First, I would like to make a couple of opening remarks.

I think that this is best described in the way teachers described an initiative back around 1984. It is a chocolate-covered lemon. I think that becomes the perfect description for it. It looks good outside but the inside is sour as can be.

A couple of comments we heard a lot were fairness in taxes and good taxes. I am here to tell you that both are oxymorons when you are dealing with taxes.

There is no fair tax unless somebody else pays it. There is no good tax unless somebody else pays.

While there was discussion that it meets some of the criteria for, again, a fair tax, it does not. It is not easy to administer. It is not easy to comply with. It is not compatible with existing taxes, for example the federal income tax. It also is not going to have the stability you hope. I spoke to my colleague in Texas this morning and we talked about how the tax has gone up. Please remember the original projection on that tax five years ago was \$6 billion. It has never come close to that. You cannot make projections that work well because we use static information when we are doing these. I think your own economists can tell you that.

Let me point out a couple of provisions in the actual bill that I see as very problematic. Pass-through revenue is supposed to be defined similarly to the Texas definition. This is much broader than Texas and Texas is having a major problem right now in defining pass-through revenue.

The cost of goods sold in section 25 does not follow federal law. That is one of the provisions that does not follow federal law. In effect, it means that to be able to survive a federal audit as well as a Nevada audit, you will need two sets of books, because the definitions do not match. We talk about income tax and yet we have decoupled right from the get-go from definitions in income tax provisions.

Another major problem is the fact that the apportionment margin is extremely complicated. We have no underlying assumptions for the tax and how the apportionment will be done, so how is the tax commission supposed to do those regulations?

Another one that does not follow federal law is the fact that I cannot change my accounting practice more than once every four years. Under federal law if I am going to change from accrual basis to cash basis I make a notification. There is almost never any problem with doing that, so for business decisions I change my accounting method, but because I am not allowed to change under this provision, again, I am running two different sets of books, which is extremely expensive.

I have a number of other issues, but I thank you for your time.

**Chairwoman Bustamante Adams:**

Could you provide the other sections for the written record.

**Carole Vilardo:**

I will send you a copy of the July Tax Topics with my notes ([Exhibit Q](#)).

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

I am the state president of the Nevada Eagle Forum. We have heard a lot about education today. I just wanted to mention one issue that has not been mentioned. There is a great way to improve our education and I am very concerned about that because I have 11 grandchildren.

The National Center for Education Statistics (NCES) did a study on Washington, D.C.'s D.C. Opportunity Scholarship Program. They took low-income children, especially those [from families] with incomes of about \$21,000 per year, and gave them an opportunity for scholarships to go to private schools. This cost much less, almost a fourth of what they were paying to go to the public schools.

According to NCES, what happened as a result was that students who were allowed to go there saw a graduation rate of 82 percent, while the regular Washington, D.C., school district graduation rate was only about 56 percent. Why did that happen? Because they had an opportunity for choice in education, and parents wanted to make sure that their children had the opportunity to learn.

Through that opportunity scholarship and choice in education these kinds of stunning educational opportunities can happen. The reason they do not happen in Nevada is that the Nevada State Education Association, as a part of the National Education Association, opposes any kind of choice in education. In their resolutions passed at the national convention in 2012, in resolutions A26 and A35, they oppose any kind of choice for parents. If we had choice for parents, as Governor Sandoval has suggested and as Florida has done, we could have an improvement in education in Nevada. Because the very people who are coming here today and trying to impose this tax on us refuse for real reform in education, such as allowing parents to choose what is best for their children, our education costs continue to rise and our education results will not.

**Geoffrey Lawrence, representing the Nevada Policy Research Institute:**

I have submitted a piece I wrote called "Fact and fiction about the unions' tax initiative" ([Exhibit R](#)). I am not going to read through all the notes I have but I just want to call attention to two points relevant to that study.

One is that it was based on an earlier version of the initiative, and, as such, there is a section in it about disclosure requirements for the Department of Taxation that is no longer accurate. It has become moot.

I want to call to your attention to a chart on page 9 of that document. I borrowed some data that was calculated by the Texas legislative nonpartisan staff. It showed how this tax instrument levies a higher effective tax burden upon certain industries relative to others, and it is because of the way the exemptions work, because you can exempt for either your labor costs or costs of goods sold, which is roughly capital costs and inventory.

Say you are a law firm and most of your costs are in personnel. You can deduct away a majority of your cost and pay a much lower tax burden than an industry that employs a more proportionate mix of man and machine. What the Texas legislative staff showed was that agriculture, for instance, shoulders a proportion of the margin tax burden about three times as high as their share of the Texas state gross domestic product. It also heavily penalizes information technology, which tends to offer high income jobs.

Other points that I want to mention is that according to United States Department of Education statistics, Nevada currently spends about \$10,500 per student, which is more than a majority of our neighbors, even though those neighbors—Utah, Arizona, and Idaho—all outperform us in terms of both test scores and graduation rates. We think that how the money is spent is at least as, if not more, important than how much is spent.

To some of the other points I have heard here, we just do not oppose things, we do come with solutions. We published a book last year that is aptly titled *Solutions 2013*, which I think we could send a copy to everyone and we are happy to provide more as you want.

**Chairwoman Bustamante Adams:**

How attractive is the MBT?

**Geoffrey Lawrence:**

To be clear we do not like the MBT either; but, compared to this tax, the MBT smells pretty rosy. We think a margin tax has some unique distortions and, as a result, is more destructive than alternative tax instruments yielding the same amount of revenue. We have advocated for broad-based consumption taxes because those taxes tend to be less destructive in terms of biasing individual decision making from both a consumer and producer standpoint.



**Chairwoman Bustamante Adams:**

You still consider that unfair, even though 75 percent of our businesses do not pay the MBT?

**Geoffrey Lawrence:**

The MBT is a tax on labor. It distorts business practice as well. By making labor more expensive it incentivizes people to conserve on the use of labor and employ potentially more costly production techniques that mechanize those jobs.

**Charlene Bybee, Private Citizen, Sparks:**

I am speaking as a citizen, a mom, and a new grandmother. The revenues from the margin tax are intended for kindergarten through twelfth grade education; however, if this passes and the money is allocated, there is nothing saying that it would not displace current dollars already spent on education. It makes me think of the lottery system in California. It was a great idea for education and all that money did was displace what the current funding was. That is a concern.

My main concern though is that pouring more money into a broken education system does not fix the system. Until we take bold actions to reform our education system here in Nevada, we are going to keep getting the same results we have always gotten. We need to look at states where true reform is working. It is happening out there because other states like Florida and Arizona are taking these bold steps.

There is no doubt that education is important to the future of our state. You and I, families, and businesses understand that. We need to strengthen our economy because as businesses succeed we all reap the benefits. We all will have more money for this state and for our citizens.

I urge you to look outside the box and make true education reform this legislative session. We can do better. We need to do better, because, yes, it is about the kids.

**Assemblywoman Pierce:**

I want to set the record straight. One of Jeb Bush's reforms, when he was Governor of Florida, was that he dramatically increased funding for education. That was one of the reforms.

**Chairwoman Bustamante Adams:**

We have somebody in Las Vegas for public comment. Please state your name for the record.

**Jose Solorio, representing the Si Se Puede Latino Democratic Caucus:**

I am speaking for the teacher's initiative, the margin tax. I am currently chair of the Si Se Puede Latino Democratic Caucus and I am a former Clark County School Board trustee, back in 1992-93. I am also both a former and a current business owner.

First, I would like to say that even as far back as 20 years ago, Nevada has always been deprived of proper and adequate funding for education. I will use an example. My grandson has 39 kids in his kindergarten class. My wife, who is a teacher, has some classes near 40 children, with some very specialized students (special education, ELL, and kids from hard backgrounds).

With the margin tax we finally have a solution in place. This margin tax is fair and it is simple. It gives an opportunity for big business to participate in the proper funding of education. Finally, this is something we can do.

I want to say also that currently Latinos are being deprived of a fair education. In a recent survey, in 69 of 70 classrooms there was no actual instruction of language learners going on. These are students who are not being taught. That is why we are having a high failure rate, as far as students dropping out of school and Latinos not graduating.

We all agree that we need fixes to our education system. We also agree that we need funding. Finally there is funding in place. I wholly support it. I think everyone should get on board. If we continue to do what we have done the last 20 years we will not have funding. I implore you as a Committee to look at supporting and passing this. If not then we as the citizens of the State of Nevada need to get on board and make funding a priority.

**Chairwoman Bustamante Adams:**

We have our last person here in Carson City. State your name for the record.

**Hermann Glockler, Private Citizen, Reno:**

The first comment I would like to make is that before I came down here I did go on the website and I did look up the statistics for the 2012 student year in Las Vegas. The only thing I can say is that the front page of this study had some nice green apples on it and it did say that the average number of students per teacher is 19.7, so the previous number of 35 or thereabouts in a class,

maybe specializing, and I am not declaring that it is not happening, but the average number of students per class in the Nevada school districts is apparently 19.7, according to these particular statistics from 2012, just one year ago.

The second comment I would like to make is that I noticed that there are at least eight members of the student association, or the education associations here, two different associations, but none of the teachers. Why was there not much more interest by teachers to come forward and say this is what we would like to see more. To me at least the unions are involved in this thing here. It simply looks to me like they have sold out the education problems to the unions to be solving this and that is the wrong way to go, because unions themselves, managers of unions, have stated that they are not representing the students because students do not pay union fees.

How much of the education budget is actually going into the classroom versus the administration? It is an open secret that a lot of money gets lost in the administration sections, where salaries are far far higher than what teachers are getting, and, as far as I am concerned, the teachers are the ones who really do teach the kids and their salaries should be, if anything, higher than the administration, because we would not have this migration of competent teachers from the classroom into the administration.

**Chairwoman Bustamante Adams:**

I will close public comments. I want to thank everyone for coming and being part of the presentation. I know that there were some individuals who could not come to the witness table. We are 50 minutes over the allotted time and I have Committee members who have left and have gone to other committee meetings, and I am going to lose some more. I do ask you to just submit your testimony for the record. Please just say your names, to make sure that I capture it.

**Autumn Tampa, Private Citizen, Las Vegas:**

I have submitted written testimony ([Exhibit S](#)).

**Chairwoman Bustamante Adams:**

We did get your written testimony and have made it part of the public record.

**Lisa Muntean, Private Citizen, Las Vegas:**

I am a teacher for the CCSD. I will submit testimony.

**Chairwoman Bustamante Adams:**

Thank you Committee members. Thank you Mr. Peck for your support and sponsorship of the bill. [[Exhibit T](#), [Exhibit U](#), [Exhibit V](#), [Exhibit W](#), [Exhibit X](#), [Exhibit Y](#), [Exhibit Z](#), [Exhibit AA](#), [Exhibit BB](#), [Exhibit CC](#), [Exhibit DD](#), [Exhibit EE](#), and [Exhibit FF](#) were presented but not discussed and are included as exhibits for the meeting.] I will close the hearing on I.P. 1. The meeting is adjourned [at 3:56 p.m.].

RESPECTFULLY SUBMITTED:

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Gina Hall  
Committee Secretary

APPROVED BY:

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Assemblywoman Irene Bustamante Adams  
Chairwoman

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

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Senator Ruben J. Kihuen  
Chairman

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

## EXHIBITS

**Committee Name:** Committee on Taxation

**Date:** March 5, 2013

**Time of Meeting:** 1:01 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
I.P. 1	C	The Education Initiative	Frequently Asked Questions About the Margin Tax
I.P. 1	D	Al Martinez	Prepared testimony
I.P. 1	E	Robert Fulkerson	Prepared testimony
I.P. 1	F	Maddi Eckert	Prepared testimony
I.P. 1	G	Lynn Warne	Prepared testimony
I.P. 1	H	Bernie Anderson	Prepared testimony
I.P. 1	I	Bryan Wachter	Prepared testimony
I.P. 1	J	William Uffelman	Financial Institution Taxes and Fees Paid
I.P. 1	K	William Uffelman	Revenue Forecast from Economic Forum December 2013
I.P. 1	L	Heritage Bank	Estimated Margin Tax
I.P. 1	M	Bob Linden	Prepared testimony
I.P. 1	N	Tyler Corder	Prepared testimony
I.P. 1	O	Mike Olsen	Prepared testimony
I.P. 1	P	Department of Taxation	Unsolicited Executive Agency Fiscal Note
I.P. 1	Q	Carole Vilardo	Tax Topics
I.P. 1	R	Geoffrey Lawrence	Facts and fiction about the unions' tax initiative
I.P. 1	S	Autumn Tampa	Prepared testimony
I.P. 1	T	Gilberta Hetrick	Prepared testimony
I.P. 1	U	Mark Sektnan	Prepared testimony
I.P. 1	V	Tim Wulf	Prepared testimony
I.P. 1	W	Randi Thompson	Prepared testimony
I.P. 1	X	Allen Batts	Prepared testimony

I.P. 1	Y	Randi Thompson	2011 Texas Franchise Tax Report Information and Instructions
I.P. 1	Z	Richard Tellier	Prepared Testimony
I.P. 1	AA	John Ramous	Prepared Testimony
I.P. 1	BB	Bullis & Company CPAs	Prepared Testimony
I.P. 1	CC	Nevada Franchised Auto Dealers Association	2011 Economic Impact Report
I.P. 1	DD	Nevada State Education Association	Postcards in Support
I.P. 1	EE	Randi Thompson	Prepared Testimony
I.P. 1	FF	Multiple Constituents	Emails in Opposition