

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

**Seventy-Eighth Session
April 7, 2015**

The Committee on Taxation was called to order by Chairman Derek Armstrong at 12:37 p.m. on Tuesday, April 7, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Derek Armstrong, Chairman
Assemblyman Randy Kirner, Vice Chairman
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Olivia Diaz
Assemblywoman Jill Dickman
Assemblyman John Hambrick
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Anderson, Assembly District No. 13

Minutes ID: 808



STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Bryan Fernley, Committee Counsel
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Phyllis Gurgevich, President, Executive Director, Nevada Bankers Association
Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association
Ray Bacon, representing Nevada Manufacturers Association
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association
Bryan Wachter, Director, Public and Government Affairs, the Retail Association of Nevada
Terry Graves, representing Nevada Cogeneration Associates No.1 and a scrap metal processing group
Matthew A. Taylor, representing Nevada Registered Agent Association
Ed Uehling, Private Citizen, Las Vegas, Nevada
Lisa Foster, representing State of Nevada Association of Providers
Pete Ernaut, representing Nevada Resort Association
Richard Perkins, representing Wynn Resorts, Las Vegas
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Tray Abney, Director of Government Relations, Chamber of Commerce of Reno, Sparks, and Northern Nevada
Greg Ferraro, representing Nevada Resort Association
Russell Rowe, representing AEG Live
David Goldwater, representing Las Vegas Motor Speedway Fan Advisory Council
Garrett Gordon, representing Broadacres Open Air Marketplace, LLC
Chris Ferrari, representing Granite Gaming Holdings
Tom Clark, representing Burning Man Project

Chairman Armstrong:

[Roll was called and housekeeping items discussed.] I want to go over the agenda today, to give everyone an idea of how it is going to work. We will be taking the bills out of order.

For the afternoon, we will meet from about 12:30 p.m. to 3:45 p.m. We will recess and reconvene after the Assembly Committee on Legislative Operations and Elections and the Assembly Committee on Transportation conclude their meetings.

At this point I will open the hearing for Assembly Bill 464.

[Assemblyman Kirner assumed the Chair.]

**Assembly Bill 464: Revises provisions relating to state financial administration.
(BDR 32-851)**

Vice Chairman Kirner:

Assembly Bill 464 is a bill that has been drafted by Assemblyman Armstrong, with other support. Please proceed when you are ready.

Assemblyman Derek Armstrong, Assembly District No. 21:

We heard Governor Sandoval speak of a "New Nevada" at his inauguration, in the State of the State Address, and in his presentation on March 18. He spoke of how this will set the tone for how Nevada will be shaped for future generations, and that the Nevada of 2064 will look much different than the Nevada of now. We will have a more diverse economy that will take on the twenty-first century. We will be a leader for innovative companies like homegrown businesses such as Switch and the upcoming unmanned aerial vehicle industry. This will be the tip of the iceberg, and in 50 years, Nevadans will look back and say we were part of that vital undertaking of this New Nevada.

The education proposals in 2015 will start the paradigm shift that will reform and improve our state, and ensure that the children will become the leaders of tomorrow. I feel that A.B. 464, while not an education proposal itself, is a vehicle to help ensure that we can accomplish those goals of the New Nevada.

Before I start my PowerPoint slides ([Exhibit C](#)), I want to thank some of the members who helped develop and move this conversation forward. I would like to thank the Speaker, Assemblyman John Hambrick, for his confidence in me throughout this process. He has put a lot of faith in me as a new legislator, and I want to thank him for that. I would like to thank the Majority Leader, Assemblyman Paul Anderson, for his willingness to explore different options and

provide his input as a small business owner. I would also like to thank the Minority Leader, Assemblywoman Marilyn Kirkpatrick, for being a tremendous resource whom I respect and have worked with throughout this process, and I have utilized her input in this proposal.

This is not a partisan issue. This is a Nevada issue.

I would also like to thank the countless individuals I have met with, and will meet with, in determining what makes the most sense for Nevada.

For me, I tried to step back and look at the big picture. That big picture shows Nevada has failed its children for too long. I think this quote by Abraham Lincoln is a reflection of my mindset right now (page 2, [Exhibit C](#)). He said "My great concern is not whether you have failed, but whether you are content with your failure." I am not content with the current education system in Nevada, and I am not alone. The parents of those children expect more, and so does the business community of Nevada. We heard that during more than nine hours of hearings on March 18, and in the presentations that have continued since then.

The purpose of this proposal (page 3, [Exhibit C](#)) is to create a funding mechanism to support the improvement of education in Nevada. In coming to that decision it was clear this was something the state supported. The business community stepped up to the plate and said, "We are ready to make the investment in our children for a better Nevada." I feel that this proposal accomplishes those goals, providing a mechanism for business to invest in the workforce and in employee futures. Additionally, I believe that [A.B. 464](#) starts the conversation for the broader tax reform that is so badly needed to keep up with population growth and the needs of Nevadans.

I think it is important to explain where I started, where I am, and where I think we may end up.

I started at the beginning of this session with the *Executive Budget* that was released during the State of the State Address, and with the knowledge of the failed measures of the 2014 election. Those factors, along with my admitted bias to protect small businesses, led me to start the process that put me where I am today.

I started by looking at the tax system as a whole, to see if there were other options. I asked mining to provide some information regarding some of their exemptions, which they did. I looked at the sales tax structure, and we

had that conversation in this very Committee with Assemblyman Pat Hickey's discussion on the sales tax. I had numerous conversations with individuals like Carole Vilardo [Nevada Taxpayers Association] about the tax structure of the state. She is a tremendous resource, and I cannot thank her enough. I looked at other things, like gaming taxes, and I continue to look at those. I provided an exhibit ([Exhibit D](#)) that is an article from the *Las Vegas Review-Journal* on Sunday [April 4, 2015] that talked about some of the things gaming is currently doing and looking at. The article I provided is about the MGM breaking ground in Maryland, a state with a lot higher gaming taxes than Nevada. I expect that there are other considerations, like markets and other things, but maybe we do need to look more at gaming.

During this session we have heard from other sources about the tax structures of Nevada, and their strengths and weaknesses. I have talked to numerous businesses, economists, and elected officials. Most importantly, I have talked to taxpayers. I have received hundreds of emails providing opinions and information regarding how we should approach the funding mechanisms for improving education. I feel that where we are today is the result of a lot of different input, and I also feel that this proposal is not 100 percent complete.

Since we proposed it, I have spoken to the Secretary of State and many others, and you will hear related comments during this hearing. I will comment on the details as we go through them, on how this is a living document, and I will suggest changes that I feel are important.

This proposal actually encompassed several parts of the *Executive Budget* (page 5, [Exhibit C](#)) and I wanted to clarify that, because we have seen entities like the Guinn Center for Policy Priorities provide analysis on comparisons between different proposals ([Exhibit E](#)). I want to take a step back and show that that analysis is not complete, because it was not everything that I entailed. I also want to explain why my revenue number came up differently, and to show how scalable this proposal was based on the final revenue numbers that the Legislature ultimately decides. I hope to talk more about this as we go along.

This proposal encompasses repealing parts of the current tax code. It also covers more than one part of the *Executive Budget*. This proposal repeals the bank branch excise fee, repeals the financial institution part of the modified business tax (MBT), includes the gaming percentage fee portion enhancement and the business license fee (BLF) proposal, and the increase in the MBT that was specific to the mining industry in the *Executive Budget*.

It is important to note that I have not seen a bill reflecting an enhancement of the gaming percentage fee that was valued at about \$39 million over the biennium, and if that is the case, I am more than willing to reduce this proposal accordingly.

Why my proposal ended up higher than the *Executive Budget* was a result of the revenue ramp-up period. We heard testimony that Senate Bill 252 would take time to go into effect, maybe one to two quarters, or even longer. I do not have that issue with this proposal, and in addition, I am more than willing to make the adjustments to remove the additional \$61.9 million. So even before we start, there is potential for removing \$100 million from this proposal.

At this point I would like to go into the details of the bill (page 7, [Exhibit C](#)). In sections 8 and 9, we see the increase of the MBT to 1.56 percent. We also see that it lowers the exemption from \$85,000 per quarter to \$50,000 per quarter for all businesses.

Section 42 repeals the deduction for health care for the MBT computation, and it also repeals the bank branch excise tax.

Sections 18 and 19 increase the business license fee to \$300 for non-corporations and \$500 for corporations.

In section 17, we start the process for collecting data we currently do not have.

The proposal is pretty simple in itself, and really that is the heart of the conversation, but I think there are numerous policy discussions we will have. One is that we make the MBT broader, by reducing the exclusion from \$85,000 per quarter to \$50,000 per quarter.

I have included a handout (page 3, [Exhibit F](#)) that shows the net effect of this is that we are adding a little over 5,000 businesses that will now pay the MBT, that are currently not paying it.

Additionally, we fix a longstanding issue. When the financial institutions portion of the MBT was created, it did not take into account what a small business was. There was a 2 percent tax on everything classified as a financial institution. In coming up with this proposal, even at the \$50,000 per quarter level, we saw that over 900 of the 1,300 financial institutions currently paying the MBT would become exempt; therefore, we are protecting small businesses that are considered financial institutions.

The second portion of a policy discussion has to do with removing the health care deduction. We saw that in several other proposals, and currently in the net proceeds of minerals (NPOM) tax, we do not see that they are allowed to take the health care deduction, and similarly the sunsets for those which makes that permanent in both the *Executive Budget* and Senator Spearman's plan. I felt it necessary to have that policy discussion as to maybe we should not allow that for the MBT as well. My argument for that would be that health care is now mandated, according to the Affordable Care Act. Whether or not you agree with that, it is the law.

That expenditure was a proposal based on one of Assemblywoman Kirkpatrick's bills from last session, for the tax expenditure report from the Department of Taxation. We saw that portion of this is worth about \$700 million over the biennium.

The next policy discussion has to do with whether or not corporations should be treated the same as small businesses, or pass-through entities, as far as the BLF is concerned. In my mind I wanted to start to make that distinction between what a small business is and what a bigger business is. While this is not a perfect proposal, and there are definitely arguments against it because there are small corporations. In my mind and in general, a corporation under this proposal is more a C corporation and not a pass-through entity. We may, however, have to clean up some of that language in the bill, as a discussion with Ms. Vilardo revealed that all entities—partnerships, sole proprietors, and limited-liability companies (LLC)—will be treated under this \$300 flat fee, and then corporations, either C corporations or corporations that started off as a C corporation and then filed an S election, would be paying \$500. There is a little bit of an overlap, and maybe some confusion there, because if you are an LLC and you file an S election, then you would be charged \$300, so I think there is an unintended consequence of this policy, which I am more than willing to admit. You will see more and more companies file as LLCs, and then file an S election, rather than starting as corporations, and then filing an S election, which I would argue is probably more advantageous anyway.

Section 17 of the bill is the mechanism to start collecting data. We have heard testimony that we do not have the data to make a decision based on gross revenue tax, that the current proposals before us are based on other states' models, and that the rates would have to be adjusted for future biennia. At that point I felt it necessary that we have the mechanism to first collect the data before we base the tax on \$438 million, without having the current data to make those decisions. I have since had conversations with the Secretary of State, and she has advised me, and I agree, that having businesses declare that information might be negatively interpreted and might not be

advantageous for Nevada. I would be more than willing to make an amendment to the bill, or strike that section from the bill; however, I thought it was a good argument to say that we need to first collect the data before we jump headfirst into some of the other proposals.

Why do I think this policy make sense? First, I think it is simple. It is quick and it is cheap to implement. (page 9, [Exhibit C](#)) I think the Department of Taxation estimated about \$350,000 to implement; I do not know the exact figure from the fiscal note off the top of my head. I felt that was important, because we do not want to be adding additional government when we do not have to, and if I can remove that expense from the proposal itself then I will. In addition to the \$31.9 million for the gaming percentage fee that would be applied to slot route operators, the \$61.9 million that I could take out because it came in higher than Governor Sandoval's recommended proposal, plus about \$4 million that is the fiscal note for S.B. 252, can all be removed from this proposal.

In addition, we saw in the S.B. 252 fiscal note, which is on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit G](#)), that in future biennia, it is worth about \$8 million per year, so each year that it is not implemented, we could save \$8 million. I felt that was pretty important in the proposal.

Next, it is easy to calculate. Businesses can currently do this calculation on the back of a napkin. You do not have to hire an attorney or an accountant to determine what gross revenue was. I thought that was important, not for myself or for my business, because I would definitely see more business if other proposals were accepted, but I did not think it was a good policy moving forward.

The second part is it is predictable (page 9, [Exhibit C](#)). We have ten years of data for the MBT, and the Economic Forum is pretty close in predicting how it is going to come out, which I thought was a benefit to this plan.

Next, it is transparent. Oftentimes, when you go see an accountant and you are doing your taxes, you try to get out of taxes. That is kind of the way I read bills. My mindset is, how can I get my clients out of paying this tax? So, when I was writing the proposal, I was writing it with that in mind as well, that I do not want people to get out of the tax and there is no accounting magic that you can do for this. The MBT is based on payroll, so if you pay your employees, you will pay the tax.

Next, it broadens the tax structure. The BLF portion of this will be broad-based and will touch every entity in Nevada. The MBT portion of this broadens the base by more than 5,000 businesses, so in both parts of the proposal it is broad-based.

Next, it starts the process of tax reform in Nevada that is so badly needed. We need better policy, and that is what I am going for.

When we implemented the MBT, it applied to everyone, and as the sessions have gone on, we have increased the rates, we have increased exemptions, and we have created specific industry rates. All of those have gone against good policy, and this is a way to get us back to doing something that is better policy.

I want to talk more about the policy of why I thought the MBT and the BLF fee structure, as I proposed, is better for education. For me it makes sense in the long-term vision of the plan, for that New Nevada in 2064, where we see that businesses will look different than they do now. We will have less reliance on gaming, because we will have other businesses that have grown. I admit gaming will pay a large portion of this tax to begin with, but the natural result of the plan that will occur once we improve education is that we will have other businesses that will come, and gaming will pay less as a result of that diversified Nevada, that New Nevada that Governor Sandoval has talked so much about.

I just want to finish this portion of the hearing by reminding everyone that we are not content with failure. The quote I showed at the beginning of my presentation (page 2, [Exhibit C](#)), and that it is our duty to ensure that we fail no more for our kids, and that is what I hope to accomplish with this.

At this time, I would like to open it up for Assemblyman Paul Anderson for his comments.

Assemblyman Paul Anderson, Assembly District No. 13:

I am proud to sit next to Assemblyman Armstrong today. He is an impressive man, and it is certainly a pleasure to have him in this Assembly and as a colleague.

I come to you today as a small business owner who pays the MBT. I have family businesses, as well as my own, that pay this tax. Because of that, I feel I have some direct experience.

In my own business, I only do work with other business owners. I have an information technology (IT) business where we service businesses, deal with business owners, and help them with all of their information technology needs. That allows me to have a relationship with a lot of business owners who also pay this tax—who also struggle with the expenses, the burdens, and the benefits of regulation and government oversight.

I come to you today with a firsthand account and experience of seeing friends and colleagues who own businesses paying the MBT. I can confidently say it has nothing to do with hiring. I have heard the argument that this is a disincentive to hire. It is irrelevant to the decision of whether or not I hire an employee. It is irrelevant to my family's companies and to the businesses I support. It is no more relevant than the Social Security tax that I have to match as an employer. It is no more relevant than workers' compensation or unemployment insurance that I have to pay as an employer.

The costs of hiring an employee are there because I have a service that is in demand, so I need somebody to fill that service. I have products that need to be sold, so I have to employ individuals to sell those products. That is the deciding factor on whether or not I hire an employee.

I also think that what is wonderful about the MBT is it is extremely flexible. Wonderful is probably the wrong term to use about any tax, but the MBT is extremely flexible in that it can be based upon the products we end up buying as a Legislature. When we decide on the final budget number, we come to a conclusion, and we figure out what is in and what is out. These numbers can be adjusted to meet the needs of the state, and more importantly meet the needs of Nevadans.

I think as we look at our state, and what has been proposed as new tax policy, it is important to remember what is unique about Nevada. We certainly have built Nevada around one industry for a long time, and we have relied upon tourism and all that it supports and provides to the economy for a long time. Possibly not until recently, over the last few years, have we begun to seriously diversify our economy. To a great extent, with great expense, and with great investment by the taxpayers of Nevada, we have invested in opportunities to bring new companies here. I think it is the point Assemblyman Armstrong made that as we diversify our economy, our tax base will also diversify itself under A.B. 464, through the MBT, and through the BLF. It is a natural progression.

In looking at other states, Texas has 369,000 employers; Washington has well over 200,000 employers. I might be off on those numbers, but I think it is a pretty good comparison to what Nevada is not, which is a large employer base. We have 56,000 employers that pay a taxable wage. That is a very small number in comparison to other states that build their tax base around a large employment base. We have a limited number of employers that employ a large portion of our population. That is simply the way our economy has developed up to this point, and I think diversity will certainly expand that and help us gain the benefits of that diverse populace as new businesses move in.

I still have three children in the Clark County School District. My son, thankfully, graduated from Shadow Ridge, and we are proud of him. He is moving on, and hopefully he will soon be a college student at the University of Nevada, Reno (UNR) or the University of Nevada, Las Vegas (UNLV). I am appreciative of the efforts of teachers, administrators, and all the individuals who have helped me, my wife, and our family as my children have gone through, and continue to go through, the school system. That is really the genesis of why we are proposing this. We are not proposing this just because we need more money to throw in a big black hole. We have serious education reform and serious education investments that we are talking about making, and we need a vehicle. We need a path to success, and that is really what we are talking about here. We are talking about our kids and we are talking about the importance of making sure that the kids who come here in the future, and businesses that bring employees with kids, have an opportunity to expand their education opportunities.

In closing, I think it is important to remember this is less about the tax and more about the investment. I think the investments we make are critical, and just as it is important for us to vet those investments, it is also our duty to make sure the investments are sound and what we are banking on. The revenue we are counting on must be just as sound.

Assemblyman Armstrong:

I wanted to make one more point, because Assemblyman Anderson brought up the disincentive to hiring. That was a worry for me when I first began the proposal, because obviously we want to make sure our economy grows.

One of the conversations I had was with Dr. Alan Schlottmann, who is an economist at UNLV. Based on that conversation, and based on the research he did, he thought that the MBT would not be a disincentive to hiring until we got

up to about 5 percent, so the increase from 1.17 to 1.56, if that is the final rate, which I am not saying it will be, is not a disincentive to hiring based on everything that he saw in his economic studies.

With that, Mr. Vice Chair, I would like to open it up for questions.

Assemblyman Hickey:

Thank you both, especially Assemblyman Armstrong. I commend you for bringing this bill forward, because you are responding to what Governor Sandoval laid out in his State of the State Address. I personally think he has earned the right to lead Nevada in trying to fund education seriously in ways that we heretofore have not done. I applaud you for stepping up to the plate in response to Governor Sandoval's message, and specifically his budget and all that is in it. I applaud you, in that being a freshman, you do not have enough history to know what you may be getting yourself into here, but you have waded into it clearly and seriously, and for that I commend you.

I have two questions. You obviously looked at Governor Sandoval's business license proposal, and while I am not asking you to critique it, I want to know what comparisons you made, and why it is you found it lacking in comparison to your proposal today?

Assemblyman Armstrong:

I do not know if I would call it lacking, as it came to the same revenue number as mine; it funded what he was doing. I had some grave concerns with how it was constructed: one with the foundation of it and the data being used, and another with the recent election and the message that margin taxes are not the most favorable thing. I wanted to make sure the input of this session, and the process that happens throughout this session, would be transparent, in that we do not just overstep what the voters want, because they overwhelmingly defeated Question 3 last November, and that was a great concern for me.

I have heard from numerous others that they like the MBT, and that is from other businesses like Assemblyman Anderson's and other small business owners. I wanted to focus on what I thought was the best policy for Nevada moving forward, and that is where this came from.

Assemblyman Hickey:

One of the criticisms of the MBT, as you noted, is that it has been too narrow in its application. You correctly identified the way we have expanded the number and shrunk the base in order to do the things we did the last two legislative sessions. Tell me a little more, how under your proposal, you feel this

adequately expands the base of businesses? You mentioned 5,000. Do you have any figure on the approximate cost those might generate as part of the total of your budget, and why you think, if this is to be sold to our taxpaying public, it is a fair and a broader tax?

Assemblyman Armstrong:

I think we have to look at the bigger picture. We keep hearing the argument that only 3 to 4 percent of the businesses in Nevada pay the MBT, and if you just take the business entity filings on its face, then that would be the case.

I would make the argument that someone who owns a rental property and filed for an LLC probably should not be paying a payroll tax, and I am okay with them not paying that, because the business tax I would consider they pay is property taxes.

I felt as if there was a nexus between Governor Sandoval's proposals and their expected benefits, and that is that we are improving education. So that worked for us that the largest employers will now enjoy that benefit as a result of the education proposals in the 2015 Session. In addition, it is an investment in those largest employers' employees' children, and that is where I thought the nexus was. That is how I think this is a more fair proposal.

Assemblyman Nelson:

I also applaud you, Assemblyman Armstrong, for all the work you have done. How do you respond to the argument that we have heard from a number of individuals—I have received hundreds of emails, and I assume you have seen the same ones—saying that increasing the BLF will result in fewer companies incorporating in Nevada? As you know, we have a number of companies that incorporate in Nevada and do not really do business here. Have you factored that into your calculations?

Assemblyman Armstrong:

I have had conversations with the registered agents and I understand their concerns. I have also had conversations with the Secretary of State, because she shares a lot of those same concerns.

I again want to reiterate that this proposal is completely scalable, and as I mentioned, it came in \$61 million above the *Executive Budget*, plus there might be the \$31.9 million that we could take out based on one of the revenue enhancements that has not come forward. In addition, the implementation fees for this are a lot less. With that, I could cut \$105 million off the top. The BLF portion of this proposal generated \$126 million over the biennium. If you take that out, we only have to make up \$21 million.

The simplest way I could show how scalable this is, is that there are 126,000 corporations in Nevada, so if you do a \$100 fee increase for them, that is \$12.6 million per year. That is roughly \$25.2 million over the biennium. If we took out that \$105 million and replaced it with just a \$100 fee increase on corporations, that would still give us another \$4 million to \$5 million buffer for attrition, and then my proposal would turn into a \$200 fee for non-corporations and a \$300 fee for corporations. I think that would alleviate a lot of those arguments.

Finally, from a policy standpoint, yes, we will lose businesses, but I do not want us to be protectionists of an industry that does not have businesses actually in Nevada.

Assemblyman Paul Anderson:

Assemblyman Armstrong said it well, and his last comment really brought it home. The idea is that we are trying to diversify the economy, as well as build a tax base that supports that diversification. If you look to protect an industry whose clients have no skin in the game here, no investment in the state, but receive all the benefits the rest of us subsidize as business owners or as taxpayers, it is difficult to weigh that out when you are comparing. Certainly we expect with any tax policy it will change behavior. That is a given with any tax policy, but the goal here is to broaden that base and have everyone have some skin in the game.

Assemblywoman Kirkpatrick:

I have been in your shoes for the last ten years, trying to stabilize our tax base, trying to make it simple, trying to bring a steady revenue source. It is great that we are having this discussion; in fact, I killed my own BLF bill because I think your vehicle makes more sense. Mine was a little bit more complicated. I was trying to get to the same conversation about what revenue do we have in place and how can we put it in place fast enough to get it within the first quarter, because we need revenue sooner rather than later.

What do business owners already know that makes sense, and on the MBT I can tell you, and Mr. Abney will remember this because I did not pay much attention to him until the time that he did this, but he was absolutely right in 2009, when he came to the table as the sole person saying do not bifurcate the MBT. Do not change that. You are going to create bigger problems. He has been saying that for a very long time, and we legislators thought we were smarter than the business sector at that time, we did not listen, and here we are in another situation where we have now exempted it and moved it out further, yet we have not ever put the revenue back to replace it.

We did look at the MBT in many different ways last session, and we got nowhere. What we did hear from many folks is that they like that stability. They like knowing what that is. They like knowing that it is part of their overhead and they can plan on it. Companies that are labor intensive do not like it so much, because in their opinion it creates hardships for them at times when they rely on seasonal work, or different things, but I do think there is something to be said about this particular proposal being part of a discussion. This is probably the first time in my ten years that in a bipartisan way we are having a discussion, and we have to be able to talk about what works and what does not work, because Nevada is very unique in how we do business, on so many levels.

We have six blocks on the Las Vegas Strip that fund 87 percent of our budget, and it has over 90 of the top 100 employers in our state; but then we have other parts of our state that rely on us, to ensure they get the services they need. We have Washoe County now recovering and embracing a new industry. Our state is very unique and very different from other states.

I commend everyone for being at the table, because I think this is a first time business has said we have to fund education, we have to pay for IT needs, and we have to ensure that our state employees are not begging for a paycheck. I think this is a great start and I am glad we are having a public discussion about it. We need to all work together to do what is best to move our state forward.

I support conceptually where we are going. I look forward to any amendments. I hope that people come to the table and state their issues with it, so we can really discuss if there are amendments that need to be made. I never push people away from opposing my bills. I do not think this is a session we should be shy.

I hope all of the folks in the audience have something to say about it, because I sat through a nine-hour hearing on the Senate side and I am happy to sit through a nine-hour hearing on the Assembly side for the very same reason.

If you could just simplify it for me, Assemblyman Armstrong, on the BLF; it is \$300 and then \$500, just those two?

I just want to say, to all those folks who are sitting out there, it is high time you come to the table and give some kind of input, because it is not good for the state if we do not have a real discussion.

Assemblyman Armstrong:

Thank you, Assemblywoman Kirkpatrick, for having the conversations with me about this, and for killing your bill for this proposal. In your proposal, when we talked about it, there were different rates, and I saw a lot of unintended consequences with that. I wanted to prevent those unintended consequences by having something that might be a little simpler.

In most respects, there is not much difference between filing for a partnership, or an LLC, or an LLC treated a sole proprietorship. There are some protection differences, but if we just created a higher rate for an LLC versus a partnership, then people would just file partnerships.

In that respect, for those pass-through entities, we do not want any unintended consequences from people filing things, and then not receiving the revenue we are projecting. To make sure I could more accurately project the revenue, I kept the proposal simpler for pass-through entities and corporations.

Assemblywoman Dickman:

This is more of a statement. There is a point I would like to make. The other proposal does not eliminate the MBT, right? That is another quarterly filing that all businesses would have to do that this makes simpler.

Assemblyman Armstrong:

In neither of the other proposals did we actually eliminate the MBT. In fact, both the other proposals have increases to the MBT of a higher rate than mine, but it is just a specific industry tax. It is 2 percent for mining to treat them as financial institutions. I thought under better tax policy that it is a more accurate representation to have everyone fall under one rate.

As Assemblyman Hickey pointed out, I am a freshman, and maybe I did not know the history, but I actually did a lot of research trying to figure out back in 2003, and the sessions after that, why the rates have changed and why there is a separate rate for financial institutions. The reasons are pretty astonishing in that it was not really based on policy, but was a kind of punitive measure against financial institutions more than anything.

I thought that this proposal got us back to having more sound tax policy rather than just arbitrary rates for different industries.

Assemblywoman Dickman:

My point is that with Governor Sandoval's plan, all businesses would have to file an additional quarterly tax, which means more accounting, more cost for accounting, so this is actually a savings for businesses.

Assemblyman Armstrong:

I am sorry I misunderstood your question. Yes, in addition to that, businesses would not only pay the BLF portion, they would actually have to pay for the calculation of that, which is an additional cost that is saved for businesses under this proposal.

Vice Chairman Kirner:

You had mentioned in earlier testimony, when you were comparing this plan to S.B. 252, a concern about how the numbers came about, in developing those charts. Would you care to talk about that?

Assemblyman Armstrong:

It is called "Table 1, General Fund Revenue for 2015-17 Biennium" (page 5, [Exhibit C](#)). Because there is no delay in the implementation of the rates for the MBT or the BLF, I ended up with a cushion in that first year, and that is because of the timing of S.B. 252; it goes into effect at a later point. Based on the analysis, it would make \$187.5 million the first year, and \$250 million in the second year. I wanted to make sure we hit that budget for the second year, because I did not want to have to come back here and say we were short of revenue. In coming up with that budget, to hit that second year, we created a cushion in the first year of \$61.9 million, based on the other proposals.

I wanted to be honest when I created this proposal, and I did not want to hide the ball. I wanted to come up with the rates I thought would be the highest rates, and then work our way back. It does not do us any service to come to the voters or to the public, or this body as a whole, and say that this proposal would be a lot lower rate, and then at the end of the day say it needed to be a higher rate. I felt that would be a disservice, and I did not want to do that. I would rather come up with higher rates and say this is the maximum, and then let us work our way back.

Assemblywoman Bustamante Adams:

I also want to say that I am grateful for the opportunity to hear A.B. 464, and for your presentation. I am also grateful for the bipartisan effort that went into this. It is interesting that the same arguments we heard last session for why this would not work are what we are using now to say that it would work. I find that very enlightening.

You said that 87 percent, in our current form, do not pay the MBT. With the change and the additional 5,000, what would be the actual percentage?

Assemblyman Armstrong:

If you look at the chart that was uploaded to NELIS (page 3, [Exhibit F](#)), I will go over the number of businesses that are included in this proposal. For the nonfinancial institutions, we go from having 12,191 entities pay currently to 18,257, an increase of 6,066 businesses that would pay the MBT; however, we have to net out the second part of the proposal, which is to include financial institutions as part of one MBT rate. In doing so, we found that of the 1,301 businesses that currently pay the financial institution portion of the MBT, 951 would become exempt if we applied the \$50,000 per quarter exemption. At that point, once you lose those 951, we would see a net increase of 5,115 businesses. We go from roughly 13,492 paying it, to 18,607. I do not have that percentage, but those are the actual numbers, and that is out of 53,362 total businesses.

Assemblywoman Bustamante Adams:

We always want to stay a business friendly state, regarding the BLF, so in your research did you look at Delaware, which would be our number-one competition when it comes to that?

Assemblyman Armstrong:

No, I did not look at Delaware for the BLF, for some of the same reasons I mentioned prior, that I wanted to make sure that this was a broad-based proposal. In that BLF, it touches all the entities. Then the second point was it is hard to be protectionists over an industry that does not have any interest actually in Nevada, so I felt the overriding policy was that I wanted to create a structure that involved Nevada businesses for Nevada. I do understand that there are arguments against that, and I am willing to admit that.

Assemblyman Trowbridge:

This is a good proposal. I think it does a nice job of addressing the revenue side of the budget. I would like to go back to one of your original comments, where you said you were interested in protecting the small businesses, and I appreciate your willingness to work on some of the detail issues.

In regard to some of the small businesses, I would like you to consider the fees that would be for some of the smallest businesses and the ones with the lowest gross receipts. To go to what may be \$300, or perhaps \$500, might be a bit much for someone who is just a housekeeping business, a gardener, or a barber. Some of these small businesses have low grosses.

The other concern I have is, regarding some of these foreign corporations for which we are going to say \$500 is a fair price, what is the potential to lose some of those? Those folks do pay into the state coffers, but at the same time

they do not drive on our highways, and they do not send their children to our schools. I hate to coin a phrase, but it is almost free money. I would hate to do anything that would have a negative impact on our competition with some of the other low licensing fee states that are out there.

Assemblyman Armstrong:

I would like to emphasize this proposal was meant to be broad-based, and to broaden the base for the MBT at the same time. I feel that it accomplishes that. I do want to fight for small businesses, and I think I explained that a little bit where if we do take \$100 million out of this proposal, that fee might be \$200 still for all the pass-through entities and \$300 for corporations, and under that point, the only effect on small businesses would be on those that have payrolls in excess of \$50,000 per quarter. The smallest businesses would not see an increase under that type, but we would have to have that discussion moving forward as we reduce this. Regarding the \$100 million, I explained earlier that the health care deduction was worth about \$70 million, so at that point, do we add the health care deduction back in, and reduce the fees at that point? Those can be discussions moving forward, but this is a pretty flexible vehicle to move the discussion forward. I would absolutely see the smallest impact on small businesses are possible.

Assemblyman Trowbridge:

I would not define a small business as any business that has a payroll anywhere near \$50,000. I am talking below that threshold.

Assemblyman Paul Anderson:

It is a good policy discussion there. We are looking at broadening the base across those businesses that do not do any business here, whether they are using a registered agent service or have an entity registered here. I believe that total is somewhere around \$65 million, in a \$7 billion budget, whatever that budget number turns into. As we look at that, to balance the policy discussion, do we balance it on the backs of the existing businesses, which are subsidizing the great tax climate here, in an effort to keep that industry here as well? As it was brought up earlier, are we just trying to compete with Delaware or are we trying to build a new Nevada, a diverse Nevada? I think that is what we are talking about.

To that point we have some 330,000 businesses registered to do business in Nevada. A lot of them are foreign entities. They are registered in Nevada simply to either pass revenue through here, or to take advantage of our low tax state, but we have only 56,000 employers. When we compare those notes we

see there is a lot of what you might call paper companies here. They are simply here to enjoy the benefits that the rest of us are subsidizing, as we have skin in the game.

I think the nexus was pointed out earlier regarding my employees having children in school, so as a business owner, I am willing to make that investment through the MBT, through a BLF, to invest in my community. Regardless of what tax bill passes, my taxes go up. I am sitting here as a person willing to make the investment. I think it is simply the policy discussion we need in order to understand how that investment takes place. Does it really create what we are looking for in a stable, strong environment, and predictable, especially when we have ten years of history that we can base those estimates on, to invest the money where we believe we need to invest it?

Assemblyman Nelson:

Did you just testify that we have approximately 35,000 employers?

Assemblyman Paul Anderson:

There are 56,000 total businesses that have any amount of taxable wages.

Assemblyman Armstrong:

I just wanted to clarify that for the record. A better way to think of that is there are 53,362 entities that file an MBT return, whether it is a zero return or they have to pay.

Assemblyman Nelson:

Assemblyman Armstrong, I think you testified we go up to approximately 18,000 companies paying that tax, but the reason that is so low is because a lot of them have zero returns.

Assemblyman Armstrong:

Yes, the 18,000 brings it up to about 35 percent of employers that would pay the MBT, but then the rest would be considered small businesses, or would have less than \$50,000 per quarter. At this point, for the policy discussion on whether or not, if you do not have employees and you have high revenue, this captures that, I do not see really much of a difference with this proposal. That is an argument against it, but under section 22 of S.B. 252, if you do not have wages, you pay \$400 anyway. I do not know if that strengthens or weakens that argument.

Assemblywoman Neal:

How does this bill fit into abatements and economic development?

My second question is on section 13, subsection 1, paragraph (k), of the bill, on page 13, lines 22 and 23. How would the tax affect that particular type of company [New Markets Venture Capital Company], because sometimes those companies are out of the state. They have subsidiary companies that then act or perform on their behalf in the state, and potentially they are using federal dollars in order to engage in the market.

Assemblyman Armstrong:

When we talk about economic development and we see the abatements that have come forth, through this session or in previous sessions, there is a conflict when we say we are going to tax gross revenues versus then abating the companies that come here that are the largest. You bring up a great point because that is a conflict I had in a conversation with Governor Sandoval, that there is a competing interest when saying you are going to base a tax on the revenues you are going to have and then saying the biggest businesses that come to Nevada will be abated. I do not really see that as such a big conflict under this proposal when you are doing the payroll tax.

To answer the second part of your question, I am not sure if there is an effect. That section is more because we eliminated the sections in Chapter 363A of *Nevada Revised Statutes* (NRS), so we had to bring those definitions forward to say what qualifies as a financial institution. There is no intended effect other than to bring that portion of NRS into this section.

Assemblyman Hickey:

Maybe this will prepare you a bit for some questions you are probably going to have from the opponents, but you have referenced the fact that there are certain businesses, not just the corporations that use registered agents, but there are other businesses in the state that pass through investment monies, sometimes called the intangibles. I guess an argument against this plan is that it does not get at those monies. Your argument is they do not use the same kind of services, but explain how you think it does the best job it can in trying to reach those persons to contribute in a significant way.

Assemblyman Armstrong:

I will come back to the fact that there is no perfect tax plan. I think people have quoted me on that before.

Will it get all of the businesses to pay a fair share? I do not think so, but I do not think that under the other proposals we get to that either. I think under this plan there are fewer carve-outs and fewer abilities to skirt the taxes, and that is kind of my intent, to have some sort of logical nexus between the education proposals that we are funding and their expected benefits. I think that this does

that by showing those employers with the largest employee base will be making an investment in their workforce, and for their workforce's children. To me there is a correlation between the education and benefits of these proposals and this funding mechanism.

Vice Chairman Kirner:

Your comment was there is no perfect tax plan, so we have businesses that under S.B. 252 would be taxed differently than under this plan. There are winners and losers. You may have employee bases, or small employee bases, that make a lot of money, and so on and so forth. If you take a look at your plan, generally speaking, when you say there is no perfect plan, who are the winners and losers? How would you describe them?

Assemblyman Armstrong:

Winners are the ones who pay less taxes and losers are the ones who have to pay more taxes.

Assemblyman Paul Anderson:

It will come up, certainly, in opposition to the MBT in general. A tax on a company's payroll, which the business pays, but the individual does not, is certainly more burdensome on those that have employees. That is the definition of how this particular tax structure works. As we looked at that \$0 to \$50,000 threshold per quarter, the idea was to take into account our incubator businesses. Those are businesses that have four or five employees and are paying the state average wage of \$20 per hour, or they are paying minimum wage and have eight to nine employees.

We tried to see what those entities looked like and found that these were the companies that were just starting to really pick up and grow. I think as they get above that \$50,000 threshold, they begin to pay this tax and begin to participate on a larger scale. The larger they get, the more impact on services they may or may not need.

Assemblywoman Benitez-Thompson:

I am looking at the enactment dates in section 43. I want to see if I have this right. The changes regarding the definition of financial institutions and the changes in MBT are going to happen in July, but then you have the changes in section 17 going into effect on November 1, 2015, and expiring October 31, 2021. I want to ask about that expiration date. In section 17 you have the business license fee increases coming in November. Talk to me about this process flow; why does section 5 go out in 2023, and then 6 and 7 expire in 2036?

Assemblyman Armstrong:

Sections 1 through 16, and then sections 18 through 42, starting July 2015, are the MBT and the BLF portions. That date is when that would go into effect. Why section 17 is different is this section was one of the last sections that was added. It was a discussion to more or less start the conversation for collecting data that we need, to either do gross revenue or whatever that turned into. The question was how do we do that in the most efficient manner, and one that is less burdensome on businesses.

It started November 1 because, and this is where my background as a tax professional comes in, everyone files their tax returns, even if you file an extension, by October 15. When trying to come up with the easiest way to determine how to collect the data, I wanted the most recent data, and we were trying to base it on a tax return. If you go to that section, you see that it is based on the gross revenue reported on federal taxes, or if there is a catchall if you have to report it. So my intent with November 1 is it is after that October 15 deadline. We would be collecting the most recent year of federal tax information for gross revenue. We have it expire because we did not want to make it permanent. We wanted to first start the collection mechanism or have that policy discussion about collecting the data, and we felt that in 2021, having six years of data—or this Legislature meeting three times—we could make that decision at that point, as to whether or not we would then stop collecting the data, or if we needed to extend it.

Section 5 is conforming language, so I do not know if that section is referencing something that is expiring anyway.

Michael Nakamoto, Deputy Fiscal Analyst:

Section 5 of the bill is language relating to the transferrable tax credits for film that were approved during the 2013 Session. Since that program expires in 2023, as it was originally enacted during the 2013 Session, the changes proposed in section 5 would also expire at the same time. Sections 6 and 7 are the transferrable tax credits that were approved during the 28th Special Session. Those provisions expire under the legislation of Senate Bill No. 1 of the 28th Special Session in June 2036, so this would cause these provisions to expire then.

Vice Chairman Kirner:

Assemblywoman Benitez-Thompson, does that address your questions and concerns?

Assemblywoman Benitez-Thompson:

It does.

Assemblywoman Bustamante Adams:

In drafting the BLF portion, are all 501(c)s included? Are the 501(c)(3)s the ones that are exempt, and then we put everybody else in for the BLF?

Assemblyman Armstrong:

I might have to ask for some clarification on that, but it is only subject to those corporations that currently pay the BLF. If they are currently exempt, they would still continue to be exempt under this bill, or at least that was my intent. I will have Mr. Nakamoto clarify that.

Michael Nakamoto:

Assemblyman Armstrong is correct. The provisions in NRS 76.020 exempt tax exempt organizations that are qualified pursuant to section 501(c) of the Internal Revenue Code. Those provisions are not changed in the bill, so all 501(c)s would be exempt from the BLF under this proposal.

Assemblywoman Bustamante Adams:

There might be a conversation to be had to look at that, because some people have abused that requirement.

Assemblyman Armstrong:

As I mentioned before, I consider this bill to be a living document. I would look forward to having those conversations.

Vice Chairman Kirner:

At this time, I will ask those in either Las Vegas or Carson City to step to the table if they are in support of A.B. 464.

Phyllis Gurgevich, President, Executive Director, Nevada Bankers Association:

We have submitted written testimony ([Exhibit H](#)), and so I just want to make a quick comment here today.

We recognize, as an association, the state's need for revenue. We are supportive of Governor Sandoval's education reform, and we are willing as an industry to do our fair share in supporting the changes in the state.

Regarding A.B. 464, the Nevada Bankers Association wants to thank the sponsors for their fair treatment of the banking industry. We truly appreciate being treated like every other business.

While banks do support and provide a special service to the community, at the end of the day, they are just like every other business, yet since 2003, Nevada bankers have borne a higher tax rate on the MBT, and paid an additional tax—the franchise tax, or branch tax. Banks were the only industry paying this franchise tax, and the financial industry was the only industry paying the higher MBT rate. During that same period, we saw state chartered banks drop from a high of 39 to the 13 state chartered banks that serve the state currently.

It is important to note that banks do not thrive unless their clients thrive, so we work together with our clients. We suffer the same things in business that they go through, the same challenges, trying to keep doors open and employees employed.

We want to thank the sponsors for recognizing that banks are like other businesses. We understand, at the end of the day, it is up to all of you, our esteemed legislators, to decide which tax bills will move through and which will pass out of the Legislature. Our message to you today is the same message that we shared with Governor Sandoval, that Nevada bankers are happy to support and ready to pay our fair share under any tax plan that treats us fairly and equitably.

Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association:

We are in support of A.B. 464. As an industry, we have supported education like everybody else. We feel that this is a better tax policy, and a fairer tax policy. In terms of the industry, we have recovered over the last two years from the recession where we lost a number of dealerships. Sales tax revenue plummeted 54 percent for our industry, and now with the rebounding, our payrolls have increased, as have sales and the sales tax remitted. In addition, will we pay more? We will. Our average employee salary statewide is approximately \$62,000, so our payrolls will increase and this bill would enhance our payroll. I think that one thing about this bill versus Governor Sandoval's bill is it is not based on gross revenue, and in terms of getting to the number that is desired, I believe this will get us there.

I also think it is better tax policy. We are trying to economically develop and go in a different direction. We defeated the margins tax that would have hurt economic development. I do not believe this will hurt it as much because this is a controllable cost by the employer. I do not think there will be a bunch of mass layoffs because we increased the payroll tax by 0.4 percent.

Our industry wants to and has helped education and higher education, and will continue to do so. We support this legislation.

Vice Chairman Kirner:

One of the things that we think about when we look at tax policy is stability. Since the turn of the century we have gone through a little bit of a dip, come out, then a really big dip, and now we are coming back out. Is it your view that this approach is more stable or less stable than some of the alternatives?

Wayne Frediani:

I believe it is more stable based upon a gross receipts type of tax structure. My industry, I think, like many, would lay off people. They would not absorb that sort of hit. We lost dealerships, 16 of them, in the last recession. This was not because of taxation issues, but just because of the overall economy. The bankruptcies of Chrysler and General Motors ended up closing dealerships. This tax structure can go up and down for our industry, of course. When our industry goes into recession, our sales tax revenue would go down, and our payrolls would go down, but I think that would be the case for most industries. I do not think it hurts economic development as much as some other proposals.

Ray Bacon, representing Nevada Manufacturers Association:

You have an option here if you want to broaden the base. You could include some level of the smaller companies in this by doing something recommended a couple of sessions ago that nobody ever took to heart, and that is you could allow the smaller companies to have an annual filing instead of filing quarterly. It makes sense, cuts down on the administration cost, and broadens the base. It is doable. The numbers given on the other side are the total number of dollars lost by exempting the smaller companies, \$39 million. If you take that \$50,000 per quarter and cut it in half, you would maybe get two-thirds of that number back, so it is a possibility that is out there.

There is a direct connection between education and payroll. We need educated workers. The people who get paid the highest in the state are those who have the best educational background. So whether we got our education 25 years ago, we are just paying back for what the state gave to us, or some other state gave to us, as far as paying this tax, or whether it is for our future needs. I tend to scream a lot about career and technical education. That program is working, and we do not produce enough of those kids, so we are more than willing to step up. There is a direct connection, and I think that is important for this tax. I cannot find a connection with the BLF, between that and education.

The serious education reform bills seem to be lagging a little bit. Part of the deal on this when Governor Sandoval presented it was, is there going to be serious education reform? There are a bunch of things out there that are not moving as fast as they need to. That still needs to happen. Throwing more money at the system that has not worked is not going to get it done.

Since I have been around this body, for now 24 years, we have talked about third leg of the stool. What this tax does is it broadens the third leg of the stool. It takes it from roughly 12.1 percent on your pie charts to about 16.1 percent. We just made the leg stronger. To me that seems like an awfully good thing to do.

I will touch on the last key point. The manufacturing community is going to continue to reduce payrolls as we gain productivity. That is the way you stay in business in the manufacturing sector. As we have the ability to automate, that is probably going to be one of the things that happens in all sectors. In those labor-intensive sectors, 20 to 30 years from now there is probably going to be less payroll. If you take a look at some of the futurists out there, they are talking about how in 25 to 40 years we could wind up with ongoing unemployment levels in the range of 20 percent, because jobs are going to go away. That is a negative for the MBT, but the reality of the situation is that that is the reality of the situation. Will the MBT last forever? No, but it is a huge step in the right direction. It is quick, it is easy, it is fast, it is doable, and we can do it now.

Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:

We are here today to support A.B. 464. We do agree that Governor Sandoval's education goals in moving Nevada forward are laudable, and we do agree with those. We depend on people. We want those employees—not just for our sector, but for every sector—coming out and being more educated. We rely on our people. We rely on drivers.

We cannot function without employees so we do pay a pretty large share of the MBT when you look at our industry. We do not really escape the payroll tax. We do have those employees, and when we are hiring those employees, we have an expectation that hiring an additional driver is going to result in more revenue to the bottom line, so we look at the MBT as a fixed cost, just like we look at that employee's payroll, dental plan, health insurance, and workers' compensation. That is a fixed cost.

I was around in 2003 when we had the debate over what tax plan it was going to be. Was it going to be the gross receipts tax (GRT), or was it going to be a services tax? We settled on MBT. For myself, and I think a lot of people, we did have fears that this was going to be a disincentive to hiring. In the last dozen years it has been implemented, it really has not been a disincentive.

One of the issues we do have, and we did see some problems with the MBT that was passed in 2003, was the financial institutions. I have members in small rural communities who saw their banks leave town. They would have to drive over to another town to do their business banking that they used to be able to do where they lived. That was a direct correlation with the treble increase versus a regular business of the MBT on financial institutions, and that branch tax.

I really appreciate that we are taking a look at the policy that we adopted a dozen years ago, and really saying, Let us fix it. Let us have every business in the state of Nevada in the same boat. Every business with employees is going to be in the same boat. We are not going to have a scrum between 30 different sectors, trying to get a different rate, trying to have our rate lower than somebody else's, which means somebody else's rate is going to have to go up. Instead of one industry being singled out, and getting a pipe to the knee every session, it is going to feel more like a slug to the arm—a little easier when you pass that pain, and really that is what increasing taxes is, a pain. Now is it pain for something good, absolutely, whether it be for education or fixing our IT system at the Department of Motor Vehicles (DMV), which is running off COBOL, which was in place when Eisenhower was president. We do think we need to invest more revenue in the state, and put it in those places where it does make sense.

Instead of one industry or a number of industries feeling that large amount of pain, we feel it is better to spread it out to every sector, and that is something that we do like and appreciate about the MBT. It is broad-based. It is stable. It is a tax that when the Economic Forum does their predictions, they are able to come within 2 percent of predicting how much revenue is going to come in. It is also stable for a business. I know, and my members know, what that MBT is going to cost depending on what I am going to pay my employees that year, and how many employees I am going to have. I have that predictability, both at the state level and at the business level.

It is also easy to administer. This is the only tax form that I fill out at my office, because the calculation is that simple. It is going to get a little more simple by getting rid of the health care deduction, if that is something that we choose to implement. I know a number of my drivers do take advantage of that, but we

look at that as a policy decision in the Legislature. We think that this is a tax that is broad-based, that is not going to damage economic development, and one that we really need to look at fixing and look at broadening.

As Mr. Bacon said, 12.1 percent of our current budget, about \$800 million, is based on MBT today. We talk about how bad MBT is, how it is a disincentive, or how it punishes hiring, but the reality is today \$800 million comes from it, so if we want to make sure that revenue is going to continue to come in, we have to look at a way to fix it, and I think A.B. 464 does give us that ability.

I agree with Mr. Bacon and think the MBT is a true reflection of the economic activity going on in the state. My member companies that are based here, and have a number of employees using our state's services, benefit from the schools, and benefit from being able to go to places like the DMV and get faster service. We believe that the MBT is a true reflection of the economic activity that occurs in the state, as true as we have. That is why we are here to endorse and support A.B. 464.

We thank the sponsors of the bill and look forward to continuing to be part of this debate, and policy discussion.

Bryan Wachter, Director, Public and Government Affairs, Retail Association of Nevada:

One of the questions that Assemblyman Hickey and several of his colleagues on this Committee has repeatedly asked is why is this more predictable than some of the other proposals we have seen? I think all you have to do is take a look at the testimony from S.B. 252. There is a 25 percent chance that bill, and its revenue, will not materialize in order to balance the budget going forward. The architect of that bill will testify to that fact. There is a 25 percent chance that we will end up back here in a special session in order to balance the budget.

Every time we have come back in a special session, since 2003, since the MBT has been on the books, we have used the MBT to bring in that additional revenue, because as Mr. Enos pointed out, the money is predictable. The Economic Forum came within 2 percent in calculating and predicting what sort of revenue will end up coming into the state and whether or not we can balance the budget with that going forward.

I think it is important to take a look at what we have been doing since 2003. I was not here, so I have listened to all the stories everyone tells, and they like to tell them a lot. During 2005 there was an overproduction in the MBT to the tune of about \$300 million. The tax did better than it was supposed to.

The Governor at that time gave that back to the people in the form of a vehicle registration credit. It continued to produce during the economic downturn; granted, we did raise the rate, but the rate did not seem to have any economic disincentives on production in the state. People kept hiring. In fact, we have seen unemployment numbers continue to drop over the last 24 to 48 months, even with the MBT at the higher rate. If anyone suggests businesses do not hire because of the MBT, the numbers do not back that data up.

It is important to note the difference between the taxes that are collected by businesses and remitted to the state, and the taxes that are actually paid by businesses. We have things like the sales and use tax, which is required to be paid by the retailer but we collect it from our customers, and the gaming percentage fee, which is the take on gambling. It is not paid directly by casinos. There are a lot of taxes we have as a state that are levied directly on consumers, and we act as the tax collector for them.

The MBT in the retail sector is a tax paid by the retailer. We are consistently hit from different Internet sellers. Our prices are global, not so much regional or national anymore. We cannot raise the price of our products in order to compensate for an increase in a tax. We just have too many competitors, some of which are not required by government to collect the same tax we are, and so that tax is really something the retailer ends up absorbing into its costs. It is nice that the MBT is fixed and predictable, and we are able to use it going forward.

Since 2003, economic development, thanks in a large part to the Legislature and the Governor, has continued to increase, all while the MBT has been on the books. Under A.B. 464, the rate goes up just slightly, but we are bringing a lot of parity back. Every time we have the conversation about new tax systems and borrowing things from Ohio, borrowing things from Texas, borrowing things from Washington, we always have folks who take a step back and wonder what Nevada is actually doing. We get it at national conferences all the time. Nevada seems to have this conversation every two years. We need to get past the fact that the tax system is the wrong structure, and instead see how we can make sure it is the best system and the most efficient system we currently have. By doing that, we need to expand the base; we need to expand the number of folks who pay it.

Instead of getting caught up in the fact that only 13,000 businesses would pay this, or currently only 3.5 to 4 percent of businesses pay the MBT, if you look at the total economic activity of the state, those 3.5 or 6 percent of businesses actually represent 90 to 95 percent of the economic activity in the state.

The vast majority of businesses in the state do not have employees. They want to, and someday they want to move in that direction, but most employers in the state of Nevada pay this tax, and we think they should continue having that option.

We appreciate the conversation. We appreciate the sponsor. We look forward to more debate.

Assemblyman Nelson:

I want Mr. Enos to guarantee that he will not hit our knees with a pipe if we vote the wrong way.

Paul Enos:

I have been here since 1997 and I have seen legislative sessions where the question is, whose turn is it going to be in the barrel this time? In 2003 it was the banks. When you look at what happened to the banking sector, it was a pipe to the knee. In fact, some could say what they got was a bat to the head. When you see the number of banks that closed down and were unable to service the communities where they were, that absolutely had an impact.

When we are looking at tax policy, we want to look at it where, yes, you are going to increase taxes, but there is going to be a little bit of pain on everybody instead of a lot of pain on one individual sector.

Terry Graves, representing Nevada Cogeneration Associates No.1 and a scrap metal processing group:

I am representing a scrap metal processing group and a Nevada cogeneration association of independent power producers ([Exhibit I](#)). We are speaking today in support of A.B. 464, but not without some reservation. I will make this as abbreviated as possible, as most of my talking points have been discussed. Assemblyman Anderson and Assemblyman Armstrong did a great job of presenting the bill and covered most of my points. I would just like to highlight a couple of things.

Critics have said that the MBT underperforms and is no longer a viable tax. We would argue that revenue shortfalls are not due to a defective tax, but due to an underperforming national economy. You must have a vibrant economy to have a healthy tax revenue, in spite of what kind of tax you have. The Tax Foundation study ["Simplifying Nevada's Taxes: A Framework for the Future"; <http://taxfoundation.org>] concluded that this was one of the most stable business taxes they have encountered, speaking to the MBT.

I represent businesses that are probably considered small to medium-sized, and I would like to make a point about taking it outside the bubble of the Legislature here where we are thinking about how we raise more money. As I said, we support this with some reservation, and I do not think this does not comport with the theme that has already been set forth by some previous discussion.

The scrap metal processing industry is an indicator of the economy. When the economy is vigorous, scrap metals are created by new construction and by renovation of old facilities. Scrap is produced by manufacturing processes that are busy, and even private parties may be replacing appliances and so on. To that point, today the scrap metal industry is flat. With the current price of scrap iron, transportation costs are sometimes more than the value of the steel. One of my clients, who is a scrap metal processor, has had to lay off nearly one-third of its some 40 employees in recent months.

While I acknowledge there are some positive signs of upward economic trends, this economy is really not so vigorous that we can be unmindful of the impact that a tax increase will have on businesses, and indeed on the individual citizens where ultimately much of the tax burden will fall.

A policy that is simple and applied with as light a touch as possible will be appreciated. To that point, and in support of the MBT, it is also not time to be throwing curveballs at businesses and stressing them further by imposing a new and different tax policy, with new tax calculations, which could force altering their already stressed business plans.

I would also, parenthetically, like further discussion on section 17. I have concerns about it, but I will leave that to future discussions.

In conclusion, I agree with the comment that Governor Sandoval made, "no tax is perfect"; however, we feel the proposal in A.B. 464 is the most workable starting point as we go forward in discussions on how to seek revenue for education enhancements.

Vice Chairman Kirner:

At this time, we will transition to those who are opposed to A.B. 464. Please come to the table if you wish to testify in opposition to A.B. 464.

Matthew A. Taylor, representing Nevada Registered Agent Association:

I appreciate the work that has gone into this. We are here today to express support for a large portion of A.B. 464, as well as some specific concerns

regarding the BLF increase. We agree that the MBT is a much more effective alternative than the gross receipts component we testified on a few weeks ago regarding S.B. 252.

That said, we still have a major concern that such a significant increase to the business license fee is contained in this bill. We appreciate that Assemblyman Armstrong's testimony indicated those fees may scale down; however, we have to deal with the bill that is in front of us and the numbers that we have been given, and that is what we are here to testify on today.

As a reminder from our testimony to the joint meeting of the Senate Committee on Revenue and Economic Development and the Assembly Committee on Taxation, Nevada enjoys a benefit of over 200,000 businesses that come in from outside of the state of Nevada. As a result, those corporations and LLCs spend about \$130 million every biennium in state fees, at little or no cost for that revenue to the state.

We have commissioned several economists to project the effect of raising the cost of the business licenses. We specifically looked at a \$400 total cost, or a total cost including the list of officers of \$525. Assembly Bill 464 raises similar numbers, although a little bit more weighted on corporations than LLCs. That study showed a direct effect in that the proposed increase would result in a loss of 124,000 businesses in the state by the end of fiscal year 2017, most of them lost from those non-Nevada-resident businesses. In practical numbers, that means instead of raising an additional projected \$80 million from those out-of-state businesses, it will actually result in a loss of over \$50 million from those out-of-state businesses when compared to today's revenues. Those out-of-state businesses invest in forming Nevada. They are not being subsidized by our tax structure, but are in fact helping to subsidize local businesses by exporting a portion of our taxes to those out-of-state companies. The market will not support the types of fees proposed, and if we lose those businesses we miss our projected revenue targets. We will be back here in two years figuring out how to raise the money that was lost, and we lose those businesses and that revenue source forever.

We have heard testimony that this is a policy decision that places the benefit of local businesses over the businesses that do not operate here. I would encourage the Committee to understand that this is not an either/or decision. I believe we can have both. By leaving the existing BLF structure in place, and instead focusing on the well-thought-out approach of adjusting our MBT contained in this bill, Nevada can find a benefit from both local and nonresident businesses, and give our state the most predictable source of income possible.

Once again, we appreciate the promise that this bill contains, and we believe that A.B. 464 has the potential to give us a workable solution. We look forward to working with the sponsors and the Committee to find a balance that best serves the state.

Assemblywoman Kirkpatrick:

Do not take this personally, but I am feeling frustrated. It always seems the registered agents are never at the table at the end of the day. We go back to 2011, when they could not support anything. I understand the purpose of what you do. I understand how important those 120,000 businesses are, and I understand the dollars they bring to the table. We are in a situation where we cannot continue to have this discussion for ten years. Whether you are a Nevada resident or not, if we have to make cuts this session, there are going to be some people who are hurt, and businesses will not want to be in our state because it will not be worth it. This is a pretty harsh conversation to have, but it is high time we start having that conversation.

We can no longer say we have to have the discussion. We are having the discussion right now, today. We need to know what the solution is. People either have to be at the table or not. If it is \$25 that you can pay, it is something, or is it the risk that we take for attrition and we do not focus on that? I do not want to see any business leave. I have worked way too hard to bring business. I am all for people coming to the table and opposing things, but what is the solution? We are at a point in this legislative session where we have to have a solution. At what point do we have the discussion on what people can do?

This is not personal. I am probably going to ask the next two testifiers the same thing, except they have always been at the table at the very least, and will pay more. I do not think that people get to take the chicken way out today and not testify, because if you come to my office and you do not testify, I have two words for you: "Get out."

I appreciate that I did not get the emails this session, because I got them last session. I am happy to share the wealth with the freshman. There has to be a discussion about what people can pay now.

Matthew Taylor:

I absolutely agree. I was here six years ago when this came up. If you recall, registered agents and our clients were ones that were largely hit and did wind up having that two-year sunset tax, which has been a six-year sunset tax, and will likely go on at least another two years.

It is not that the industry or our clients have gotten a free ride. We did lose a significant portion of new filings, roughly 25 percent of new filings at that time. Fortunately for the state, that did generate more revenue than they lost by weighing out how much it increased versus how much we lost.

That said, this does not do this in this case. This loses \$50 million, the 200,000 businesses, over what we are raising today. This is not an issue that they cannot afford anything, but I can tell you that components within this bill, with this fee increase, will lose the state over \$50 million over the next biennium on those 200,000, and will lose it overall based on the 307,000 total entities that are registered here in the state of Nevada.

Assemblywoman Kirkpatrick:

I understand, because registered agents went from \$50 to \$100, then to \$200, and there were a bulk of you that did leave the state. It was hard to measure because there was an economic downturn at the same time. Delaware and Wyoming were flashing business cards as we were having the discussion.

It seems to me it is going to cost at least \$100 to make all the changes to go forward and switch to another state. The Secretary of State at the time did find that it was not as easy as people thought, or had told us, to go to Wyoming or Delaware.

If it is not the BLF, what is it then? Do you guys have employees in our state? Why do you come to our state and why is \$300 or \$400 a lot, because I have to think that the legal benefits are worth something.

Assemblyman Nelson, do you not charge like \$300 or \$400 an hour to bill someone? I know I have to pay \$37.50 for a fax, and \$50 for an email. There is a reason that you are here.

I am so tired of "not me, not me." I appreciate that you at least came to the table, but is there something different you can do? Can you guys hire some employees? Can you have a corporation actually headquartered here?

I am looking for a solution today, because I am tired of having the conversation of "No." I will tell you, I invite 3 million people to watch the discussion if we have to make cuts.

Matthew Taylor:

I do not take it personally and I never take debate as an argument. Debate is something that needs to happen in any healthy environment.

That said, the registered agent industry does contribute quite a bit. We have over 400 commercial registered agents that are on file here in the state. We employ over 600 employees. We spend millions of dollars every year promoting the benefits of bringing business, and advertising why businesses should come to Nevada.

I have personally spent the last 17 years in this industry working to educate entrepreneurs on why they should come to Nevada. I have raised my children and grandchildren in the school system. My employees are here and they count on me to have a workable business, so they have jobs to go to every day. On the side, that is also how I make my living, and so I hope that the business succeeds as well.

We have looked at the fees and there was some loss, but there is a cost, both emotional and financial, to relocate a business from outside the state, to a state or jurisdiction like Wyoming. I would tell you that for the 20,000 new businesses we have lost every year since 2005, Wyoming has gained 14,000 new filings during that same time period. That cost is not as great as you might think. You can actually redomesticate or relocate a business to Wyoming, keeping your original incorporation date, tax identification number, financial histories, and contracts in full effect, for less than it costs to renew at today's rates. It is very close, but it is still cheaper to move a business than it is to stay here. Part of this is just momentum of the industry. It is more expensive for the industry to move than it is for our clients to move, and we are competing against the information that is out there on the Internet. It is hard to compete when they are looking at an apples-to-apples comparison, when other states are copying our laws and getting that lawsuit protection for their clients.

Assemblywoman Kirkpatrick:

What does it take to increase that number from 400 out of 120,000? What does it take to get another 14,000 of those people to come to our state? If you have MBT, do your members pay it based on the current exemption that is in place?

Matthew Taylor:

Yes, currently our members do pay the MBT based on what their current exemptions are. We would have even supported it for ourselves to get rid of the exemptions altogether, if that was something the Committee and the Legislature decided they wanted to do. Again, that is an unpopular position, but it is something we understand and we are okay with raising our own fees, but we also live here and benefit from that. Again, our clients do not, and it is easier for them to move than it is for me to shut down an office and relocate.

Assemblyman Nelson:

It seems to me that one of the reasons companies traditionally like to come to Nevada, other than the fees, are the charging orders, the no annual meeting requirement, not listing the members of the LLCs, and things like that. Have other states copied those laws? Is that what you are talking about?

Matthew Taylor:

Yes. Wyoming specifically is one that I am familiar with, and Delaware. They are larger competitors of ours, so we are aware of what is going on. Very few states actually list owners of corporations and LLCs. Typically it is officers and managers. The protections and indemnifications for corporations and members of LLCs are things that are fairly consistent. There are some states that are a little more transparent for business owners, and they have a little more risk for operating.

That said, Wyoming has, every session, worked to try to mirror what we did, just like we started to mirror Delaware laws 25 years ago. There is an intent to what they are doing, and there is an intent to try to attract this business.

We have also lost businesses that are just staying home, because home states have improved their jurisdictions and have improved their laws, so that is something that is also there.

I would suggest to you there are very few, if any, notable benefits that exist in Nevada that do not exist in other jurisdictions.

Assemblywoman Bustamante Adams:

I know that Delaware, in order to have a BLF, especially for resident agents, it is more. It is not less than Nevada. They do have a business core, so they have other advantages for incorporating there. In Wyoming, I believe you have to do it in person, so the BLF is less, but you have to go do it in person? They do not have the online apparatus that we have here in Nevada.

Matthew Taylor:

Yes. There is a requirement that documents have a wet signature. They can be sent via FedEx or courier, but those can all be delivered via the commercial registered agent in the state of Wyoming. The client does not have to travel there. The registered agent has to have an office in Wyoming in order to facilitate that.

Assemblywoman Bustamante Adams:

So you have to drive to Wyoming to get it done if you were incorporated here in Nevada?

Matthew Taylor:

Yes. I would probably examine setting up my own office in Wyoming, or working with another commercial registered agent who is located there, to act on our behalf and to deliver those documents. It is not as difficult as it might seem.

Assemblywoman Bustamante Adams:

Would you have to pay the other agent in Wyoming to act on your behalf, or would they do it for free?

Matthew Taylor:

Either I or my client would likely hire the Wyoming registered agent. I would lose them as a client and a revenue source here in Nevada.

Assemblywoman Bustamante Adams:

Either way, Delaware charges more, and then Wyoming may charge less, but you do not get the same kind of service that you would in Nevada. I think there is give and take. Assemblyman Armstrong indicated that he would have a discussion. We would still be competitive; that is what I am trying to say.

Matthew Taylor:

As someone who has spent 17 years selling both Nevada and Wyoming corporations, I can tell you the competitive advantage of Nevada has been waning, and it becomes less so as fees increase.

Ed Uehling, Private Citizen, Las Vegas, Nevada:

I am a 72-year-resident of Nevada. We moved here when I was three years old, back in 1943. To me this discussion is very interesting, because I thought this Legislature was finally going to break the mold of the past and concentrate on economic development. With every tax law you are working on, you are either creating economic development or you are destroying economic development.

People have said there has to be a solution to this. The solution has been tried for many years of giving the schools more and more money, and the school performance is getting worse. When I graduated from Boulder City High School in 1958, I believe the performance was much higher than it is now.

You are not even sure you need this additional money. One thing we are sure about is that the public sector always needs more money. You always need to pay the bureaucrats more money, and they are already getting multiples of what the average Nevadan is making in their total compensation, what they get daily and what they get for the rest of their lives.

Someone said there is no perfect tax. It just happens that Nevada does have a perfect tax, but you will not even discuss it. It is an industry that has asked to be taxed. It is a \$2 billion industry in this state, and you will not even say the word "prostitution." These people are asking to be taxed and would provide enormous income, instead of spending tax money to prohibit prostitution and create all the social problems that come about as a result of prohibiting prostitution—the child prostitution, the abuse of women, the pimps. All those things are creations of prohibition, and you will not even discuss it.

Other perfect taxes are developing new business, but the mentality in this state is so backwards that the new business you want to bring in, you are going to give all sorts of tax benefits to. People who are sitting on this panel agreed to give Tesla over \$1 billion that we are now scrambling for. That is how little sense all of this makes. There are all sorts of new industries that would love to move to Nevada, but are scared to death of what is going on in the Legislature and what goes on with the bureaucrats in their constant greed for more and more and more.

Remember, we are competing in an international economy, and there are countries that have much lower tax rates than ours. That is why our country as a whole is losing money. That is why our national government has gone \$19 trillion into debt and is still having to spend more, partly to take care of the demands you are making on them.

It is very discouraging to see this sort of discussion, and this rape of the private sector for the benefit of a public sector that is two or three times as prosperous as the private sector here in the state.

Lisa Foster, representing State of Nevada Association of Providers:

I am here today on behalf of the State of Nevada Association of Providers, a group of business providers. They are opposed to this bill due to the increase in the MBT, which they currently pay.

The State of Nevada Association of Providers is a group of businesses that provide residential and related services to individuals with intellectual disabilities. These organizations are funded solely by Medicaid, but they are businesses. They have been working to increase the Medicaid rate. Many of you have heard me talk about this quite a bit this session, and it has been a decade since their Medicaid rates have gone up.

State of Nevada Association of Providers members are concerned that if this bill passes and there is not a Medicaid increase in the budget that is finalized, they would be operating even closer to deficit levels, so they wish to be in opposition to this particular bill.

Assemblywoman Kirkpatrick:

In S.B. 252, I believe your association is exempt, correct? I just want to be clear on the conversation that we are having, because it is easy to come in and pose something that you might have to pay, as opposed to something that you are exempt from. There is no question that without any revenue, there is no increase for Medicaid reimbursement, even in 2017. Contrary to what people believe in this building, there are more needs than just on the surface—education. Education is a key component to moving our state forward, but we have IT systems, we have Medicaid systems. We are 15 years behind on that. Would you be subject to revenue in any other package, or just this one?

Lisa Foster:

You are correct. They are exempt from the gross receipts that you see in S.B. 252, but as businesses, they do pay the MBT. They want to be on the record saying that they are hoping there is not an increase in that because they are solely funded by Medicaid. They have no other income. They just want to make sure they get on the record they are concerned about an increase in a fee that they do have to pay.

Assemblywoman Kirkpatrick:

I appreciate you answering that. I do not think that there is any one perfect solution, but we cannot give a Medicaid reimbursement in 2016 or 2017 if we cannot figure out what the revenue source is. We need something that is stable and long term, so we can plan for the future of our state.

Pete Ernaut, representing Nevada Resort Association:

Of course, I have the unenviable task of opposing Assemblyman Armstrong's bill in his own Committee. First off, I would like to say I hope these remarks are taken in the good faith in which they are intended.

I ask myself the question, "Why would we do that?" I think it goes back to what Assemblywoman Kirkpatrick is talking about. This is an important issue. Maybe no more important issue is facing this Legislature than the idea of this tax package. We have so much that we agree on. I think the beauty of this session, versus some of the other sessions I have been in, is that we agree almost wholeheartedly about the need for new education funding, reform, and programs. This may not be exactly the same, but I think it is

a marked improvement from where we have been. I think this package in front of us today deserves a commendation, for not only the courage of Assemblyman Armstrong and those he named as helping him put it together, but that we are having this debate.

It has been a number of years since we have dedicated the number of hours to the debate on prudent tax policy in this body that we are this session. You should all be commended. I think this is a well-thought-out plan, but unfortunately one that the gaming industry opposes.

As a matter of background, I think it is important to give context to this discussion. The gaming industry is the largest taxpayer in the state—that we know. It generates almost 47 percent of the entire State General Fund, and pays over 50 percent of all business taxes and fees that are paid. It is the largest employer, employing 268,000 employees directly, and another 152,000 employees indirectly. It is the largest investor, investing nearly \$50 billion, with \$35 billion of that in the last 25 years alone. It is the largest private sector provider of health care, providing over \$1.5 billion in health care benefits, more than double the next industry. It is also the largest contributor to education. Aside from the General Fund, our room tax dollars have generated nearly \$1 billion in school construction since 1998.

There is another thing that bears repeating today: the gaming industry has had the same tax policy for almost 50 years in which we support a fair, broad-based business tax, but why does that matter to you? It should not matter to you about a fair and broad-based business tax because the gaming industry might get upset or be concerned about that. It should concern you because it is a matter of critical public policy and importance. It should concern you because if we do not have a broad tax base, if we do not have a fair tax base, then you continue the overreliance on one industry, and that would be no more fiscally prudent than having 47 percent of your retirement in one investment, and that is what the state has today.

There was a time in this building that people believed the gaming industry was recession-proof. The recession we just faced, and are now digging our way out of, proved it was not, and in a big way. When 47 percent of your General Fund revenues are vested in generation by one industry, it does not take an economist to figure out that when the gaming industry got the flu, the state got the plague, and we are digging out of that now too.

This is an important matter to you as policy makers that a diverse, broad-based, and fair portfolio is good fiscal policy. I am hopeful as we get through this discussion, not just today, but over the course of the next 50-plus days that

are left, that as politics begin to wane and we focus on policy, some of the testimony here today will be remembered as an honest difference of opinion, not about why we are doing this but about how we are doing this, and that is rooted in who pays.

How did this happen? How did we get here? One thing is we do not have a broad-based business tax currently. I have heard many folks since 2003 talk about how broad-based the payroll tax is. We had a discussion earlier today about what percentage of the entities pay, and would pay, as a result of this bill and such. I have to tell you, for a number of years I thought the number was higher. What became an astonishing fact to me is that 96 percent of the business entities in the state do not pay the payroll tax. Think about that for a minute. How could that possibly be?

You have heard parts of it, and that is 180,000 or so of the 330,000 businesses in the state do not have employees, so obviously they would not pay part of the payroll tax. You have another large group that would fall underneath the exemption. The raw numbers are the raw numbers, and I think it was alluded to earlier. Of the 330,000 business entities in the state, roughly 12,200 pay the payroll tax. I would say by any commonsense definition of broad-based, it is not, so what happens is again it focuses itself on a small group of industries that pay a disproportionate share, so of course it is predictable.

I stayed awake long enough in most of my math classes in college to remember it is a lot easier to predict a smaller number, produced by a smaller number of people, so of course it is predictable.

I also would not say that the conversation about the fact that it is stable is true either. Some of the graphs presented in testimony for support today look like the top of the first hill at the rollercoaster at the New York New York. Obviously you see that when we have double-digit unemployment, it just stands to reason that a payroll tax is going to follow commensurately.

Aside from the narrow base, I think there is another misunderstanding about the MBT and its fairness issue, and it is not just that it is on the narrow base, it is that it is on gross payroll. It is not a head tax. We used to have a head tax. We used to have a per employee tax, and you could make the argument that there was some connection between the number of employees you had and the state services that you may access, but I would argue it is exactly the opposite.

One of the exhibits that I handed out (page 2, [Exhibit J](#)), "Modified Business Tax (MBT) Analysis / 100 Employees by Sector," is going to prove my point. I have heard people say this tax is as close to perfect as there is, because there is a one-to-one relationship between how many employees you have and what state services you access. That sounds good on the surface, but when you poke one level down, that argument starts to come apart, because it is a gross payroll tax, which means if you pay your folks more, you pay more of the tax.

If you look at this simple digest example, at the top of the list is the natural resources and mining industry. Their average annual salary is \$81,900; minus the deduction, the gross taxable payroll for 100 workers is just under \$7 million, which means they produce about \$77,203 in MBT liability. Now go down to retail trade. The estimated average annual salary is \$28,652; minus their health care deduction, that same 100 workers is a gross taxable payroll of roughly \$2.7 million, and that produces an estimated MBT liability of \$27,213.

It is not just that the same 100 employees in different industries pay 3.5 times the tax. It would take just a little common sense to come to the conclusion that someone who makes \$80,000 per year probably accesses fewer state services than someone who makes less than \$30,000. That nexus between the amount of employees and access to state services, in this example, would be exactly the opposite.

I think between the narrow base and inequality between industries that pay more—not just have more, but pay more—it creates an imbalance and unfair premise to the MBT.

I have heard the arguments that it is not a disincentive for job creation or promotion, but of course it is, depending on how much you pay your employees. One of the things I have heard about the other arguments of other taxes is that it does not matter whether you make money or not, you still have to pay it. That is true of this too. It is tax not on business activity but on an expense, which would be a trailing indicator.

It stands to reason we oppose A.B. 464, because the vast majority of the revenue it generates is from an increase and an expansion of the MBT, which actually moves the state, in our respectful opinion, in the wrong direction. It would double down on a tax that lacks fairness, diversity, or prudent fiscal policy, and increases the state's reliance on our industry as the largest taxpayer and contributor to the General Fund. It also provides a penalty for employers who provide health care benefits.

These arguments have been heard before, and were heard at the inception of the MBT in 2003. Some of the things people were concerned about have come true. Some of the things people were fearful of may or may not have come true.

I have brought my colleague, Richard Perkins, who is representing Wynn Resorts today. He will give a brief history of the MBT, as he was in a decently powerful position when it was created. I think it will give the entire body some context as to how it was created, what the concerns were then, and how it has played out over this last decade-plus.

Vice Chairman Kirner:

Were you here in 2003, in the Legislature?

Pete Ernaut:

No, I was not. I retired after the 1997 Session.

Vice Chairman Kirner:

You had said that the issue is rooted in who pays. Then you talked about how 4 percent do pay. One of the comments that was previously made is that the 4 percent represents a high 90 percent of our employees and businesses in the state. Is that correct?

Pete Ernaut:

Yes, since the trigger is having employees.

Assemblyman Hickey:

I will piggyback on the issue of who pays, because your industry has testified in support of the so-called BLF tax, and obviously that would be an increase of taxes to the gaming industry. In the calculation of who is going to pay that additional tax, under the BLF or the MBT, with regard to business are they not both a pass through? Obviously your employees are not going to necessarily pay that tax, although you may hire fewer, but any business calculates that. Do you not raise prices elsewhere regardless of whether there is an increase in the MBT or the BLF?

Pete Ernaut:

That is a very complicated question. I will try to give you the simplest answer possible. I think there is one thing people may not realize, because it comes out on the opposite side of this equation about how much gaming companies pay in other states in the form of taxes. The part they leave out is the competition Nevada is now under. We talked about a privileged industry, which is probably a term that was around when there were eight-track tapes, because now almost

every single state in the country, not to mention internationally, has some form of gaming. Resort gaming, of course, is growing annually, and there are a number of states now that compete directly with Nevada.

From the standpoint of whether or not we are able to pass it on, we cannot just arbitrarily make our blackjack tables go from \$25 to \$30. That is not how it works. We know that we have tremendous competition for rooms, in our restaurants, and for the entire tourism dollar.

People make those decisions about Chicago, Orlando, Las Vegas, or an Indian casino near Sacramento versus coming to Reno. They make those decisions in the totality of the expense, and the totality of the experience, so we are in a competitive environment. We are no more able to just arbitrarily pass through tax increases than any other industry. In fact, I could make a case of it being less so. Some of the members who sit on both the Assembly Committee on Taxation and the Assembly Committee on Ways and Means get to see the revenue side, as well as seeing that gaming revenues have been flat or declining for a number of quarters, so this is a very difficult thing for our state because we have so much invested in one industry. That competitive issue—the flattening of the revenue—disproportionately affects every other service in the state.

Assemblyman Hickey:

If you in fact end up paying more, as you are willing to do, having always come to the table through the BLF, how do you do that more fairly, or more easily, than an increase in the MBT? Is it simply that it will not hit you as hard?

Peter Ernaut:

It is a matter of fairness. If you look at Assemblyman Armstrong's plan, Governor Sandoval's plan, or some of the other plans, they all seem to come to the same number at the end. They all kind of hit the same target. I find that refreshing from the standpoint that many people have come to the conclusion this is about the right amount of spending, and a lot of that is driven by education. Again it is not the "why," it is the "how." As we get into the "how," as you pointed out, the Resort Association and the gaming industry have never shied away from this responsibility to invest in education, or any number of other things. When we look at this, this becomes the essence of the debate Assemblywoman Kirkpatrick was talking about, which is we are here saying if you are going to agree on "how much" and the debate is on "how," we would like to enter into the debate by saying this does not work for us and that there is a fairer way for this to be administered. But it should not work for you because again this takes the needle back the other direction; it creates a higher reliance on gaming, not a lower reliance on gaming.

So, yes, our opinion is we are willing to pay more; we just want the 47 percent to come down, and you should too. This is not a day to compare other tax plans, but this one does not accomplish that goal.

Assemblywoman Kirkpatrick:

Both of you were here in 2003, in a different capacity than you are today, in a different realm. I just wanted to make that clear, because you do know the tax policy.

I will give you credit because you have been at the table every single time it comes to gaming. I want to know when we are really going to have that discussion, because there is not one perfect tax; there is not one perfect bill. How do people think we are going to have this discussion, and it has to be public; otherwise people print portions of it and it does not work. Then you send back a piece to everybody that is not entirely correct, and people get all ginned up for no reason.

Since 1965 we have been having tax discussions in this state. In 1984 we put a Band-Aid on it. In 1993 we put another little Band-Aid on it. In 2003 we changed some things, and then we gave it all back in 2005 because we had a few legislators who thought it was a windfall. In hindsight we should never have gone to two special sessions to give it back, because it cost us as much to do that.

Now, here we are again, and I want to have a fistfight over this. I want to have a real discussion on language, on bills, because if it is not this, and it is not what is on the other side for everybody, what is everything in between? Not everybody is going to be happy.

The best legislation, in my history of being in this building, is one that not everybody loves, but they can live with it or suck it up. There is no argument that the people we have to provide services for are typically those with the lowest wages, so we end up providing more all the way around. People at the higher wages do better, and they do not rely on those services. Then there are a whole bunch of people in between, called the middle class, and we have to try to ensure they, too, can make it. I find it offensive for someone to say that \$40,000 is a lot of money. Some of my state employees do not even get that, and I do not think that is a lot of money in today's economy to try and make it on.

When are we going to have that full-on discussion? I do not know if you can give me an answer, but I am tired of going around in circles here. We have 50 bills. I have five right behind it. Let us just stay here all night, hash it out, and be done with it, or not.

Pete Ernaut:

We are ready. We have been ready. Since everybody is throwing out their pedigree, I have been in this building in one capacity or another since 1989. I have been a member of this body, a governor's chief of staff, and now in my current profession for a number of years. I have seen this debate from every single side and quite frankly we have never gotten it right, and I have been part of that problem.

We are ready to have this discussion, as the Nevada gaming industry. I think this session is refreshing because we have had more debate on taxes than maybe some of the others combined, from the standpoint of we did not have a lot of choices, a lot of multiple issues that we had to address.

One of the greatest things about this bill, and Assemblyman Armstrong's courage to bring this bill, is it highlights and brings to the head of the spear a very respectful difference of opinion. There are those who believe that business activity, judged by gross revenue, is a superior and fair way to tax. For every one of those people, there is somebody who believes exactly the opposite, that we should look at a payroll-based system. I respect that, and I think our industry respects that, and we are here as part of the debate, voicing our opinion.

I am very respectful of those who disagree with us. That is where it has to begin. I think one of the problems that has plagued this body for a number of years is the inability to have bipartisan debate and not take it personally. Just because you disagree with me does not make you wrong. Just because a Republican came up with the idea does not mean the Democrats have to hate it, and vice versa.

If you are asking me the question, when does it begin, it begins when all of you decide get in that room and have that discussion. We will be there. Where else will we be? We cannot pick up and leave. We have \$50 billion worth of steel in this ground. We have 400,000-plus in direct and indirect employees. We have lots of mouths we feed. We cannot move. We do not want to move. We are vested. We want to get this right. So you tell us and we will be there.

Assemblywoman Bustamante Adams:

I would like to preface this by saying I am a byproduct of the gaming industry, so I really value their contributions to the state and for supporting many families all over the state, but especially in southern Nevada.

Did you give the total number for the fiscal impact on gaming under this bill? In another bill [Assembly Bill 393] we are considering reducing the tax on gaming for food and beverage, and eliminating some merchandise tax. Would that portion cover the increase in the MBT under this bill? Have you done the calculations?

Pete Ernaut:

Yes. I will explain it in percentages. The bottom line is that right now we pay about 18 percent of the existing MBT, and we are only focused on the MBT portion of this. I readily recognize there is a BLF portion, and I do not know if you want me to go into that conversation at this point. We are just really focused on the MBT portion.

Between the increase from 1.17 to 1.56 percent and the elimination of the health care deduction, it takes us into the 26 to 27 percent range. So obviously the 47 percent goes up too, but in the law of big numbers, it is not going to go up much; it is just not going down any.

Assemblywoman Bustamante Adams:

Have you done the calculation for the possibility on the other tax bills we will be hearing later this evening, on the portion that gaming will gain back because of the reduction in the food and beverage tax, and the merchandising? Will that offset the amount?

Pete Ernaut:

Yes, we have. I think there are better people in the audience today from the Nevada Resort Association to discuss those calculations, because there are a couple of moving parts to the live entertainment tax (LET). The basic premise of the LET is that a live entertainment matter was taxed within the four walls, or the property, of a casino, but not other places. That was the first issue to deal with. The other issue that compounded that was that food and beverage were tallied into the LET.

Believe me when I tell you this is above my pay grade, and the only two people who might be able to answer that are Assemblywoman Kirkpatrick and another individual sitting behind me, who is probably going to testify on behalf of the Nevada Resort Association later this afternoon.

Assemblywoman Neal:

With S.B. 252, what was the percentage you were going to be paying in BLFs?

Pete Ernaut:

I do not have that in front of me, but I think it was around 12 percent of that tax. Remember, we still pay all the other taxes too. That is not an offset. That is on top of everything that we are paying.

Assemblywoman Neal:

There were not any exemptions at all for you in S.B. 252?

Pete Ernaut:

The exemption for our gross gaming revenues for sure.

Assemblywoman Neal:

You mentioned that competition has risen in other states in gaming, but at the same time you have also diluted your base and you have been competition in other states, because you have sprouted up in other states. You have created a market where there was not a market in other states. This is a point of education for me. Are you competing against yourself or are you competing against other gaming industries in other states?

Clearly I come from this interesting background, where my dad forever researched the issue, fought the issue, and talked about the issue over and over again. I thought that the issue would come up. To me, you have diluted your base by expanding, but you did it in response to the recession. A couple of months ago, I thought this issue of being down quarterly would come up. I started looking at your Form 8-Ks, your Form 10-Ks, and the things that actually show revenue to the U.S. Securities and Exchange Commission, trying to figure out when I watched the Assembly Committee on Ways and Means whether or not there was truly a discrepancy between the amount of revenue that was being captured and what was being stated.

Clearly that is a big task, because I am still looking. It is pretty close to the mark, but I am still looking at some of the other companies and subsidiaries. My dad had told me to watch right before session, because that is when the numbers start to change, somewhere around Christmas, and right before you go into legislative session things get a little frisky, so pay attention to the trend. He started collecting all the articles, a year before session, and said to pay attention to the trend and then watch the dip right before session. Sure enough, right before session the dip came. I struggle with that, because I do not want to be him, but I want to be truthful about what is out there.

I would like to have an offline discussion about all of the documents I have in my possession about that trend, and what he believes to be an accurate representation of maybe 20 years of behavior.

Pete Ernaut:

Let me just say first of all I had the great pleasure of watching your father as a State Senator, and what a remarkable Senator he was. Even though many times it was at the expense of the gaming industry, he was a very worthy adversary.

In some cases, our companies have expanded to other states, but probably the single greatest challenge that was faced by our industry, especially given the proximity to Nevada, was the advent of Native-American gaming, and that is not us. In some cases, some of our companies have begun those properties, and have run some of those properties as a matter of experience, but that is not us competing with us.

There are so many more gaming companies out there today that reside in Nevada, or that have a property on the Las Vegas Strip, in Reno, or in rural Nevada. That number changes by the year, of how many companies are out there, how many companies are in resort-style gaming, and are direct competitors. So it is a fluid process. On the flip side of that, you can see what is happening in Atlantic City today, so the numbers are changing in real time. Make no mistake that it is a competitive industry, and it is not us competing with us 100 percent of the time.

Richard Perkins, representing Wynn Resorts, Las Vegas:

I want to congratulate this Committee and the bill sponsors. Having been through this process, I know it is a very big undertaking. It takes a lot of courage to do that. I am sure you all, and the bill sponsors in particular, are receiving a great deal of criticism for just offering the language. As Assemblywoman Kirkpatrick pointed out, until you have the language, you cannot have the dialogue, and that is such a refreshing thing to see this session.

It almost gives me a bit of post-traumatic stress having the dialogue with you, going back to 2003 and how this discussion probably started. Not only is this an incredible feat, but it is almost impossible to accomplish in a single 120-day session. We have seen that time and time again. Not that some of the research has not been done prior to this session; it has, and frankly the talents of the sponsor and Assemblyman Paul Anderson are significant in putting their efforts behind this bill.

Nobody on this dais, except for Mr. Guindon, was actually here in 2003, and I remember wearing him out that session as well, going through some of the machinations in trying to accomplish some of the same goals. The parallels cannot be overstated. We had a Republican governor propose a tax plan to raise money to invest in education. That is what happened in 2003. If you fast forward to 2015, we have a very similar dynamic.

Prior to the 2003 Session, Governor Guinn appointed the Blue Ribbon Task Force, from all across different walks of life, different appointees, myself, and others, and they came up with a proposal for the gross receipts tax (GRT). That did not last very long. It was defeated fairly quickly in the early parts of the session, and we moved on to other aspects and other taxes to consider. There were dozens of proposals. We looked at corporate income taxes, net profit taxes, different types of gross receipts taxes. We even got very creative in how we named them. How does a payroll tax end up being called a modified business tax (MBT)? It really is in the packaging, in this political process.

As Mr. Ernaut mentioned, the MBT was born out of the employee head tax at the time, where everybody paid a flat tax on every employee they had on their payroll. It was not variable. Everybody paid the same tax. I would argue at least that it was more of a direct nexus to those who needed state services, including our educational process.

Unfortunately for us, in 2003 it took two special sessions, finishing July 22. I am sure none of you want to give up your summer like we did 12 years ago, and I am sure that will increase the dialogue here today.

We did not think that the MBT was a good tax at the time, to be honest, but as we all know, governing is not what you want to do, but what you can do, and that is what we arrived at with the MBT. I was actually shocked as the microphone was turned over to me that Mr. Ernaut did not blame all of your problems on me from the 2003 MBT tax, because I certainly had a big role in that debate.

It does discourage hiring. You will hear the debate that it does and does not, but for Wynn Resorts, a company with more than 12,000 employees, the hiring swings could be multiples of employees, and those numbers do add up.

As has been pointed out, this industry has always been at the table, prior to 2003 and since. We are always interested in trying to be part of the solution to the challenges you all face. The other challenge is having a disagreement with our friends on what is the most fair. Not only are we always at the table,

but we are at the table given the fact that in 2014 those collective businesses on the Las Vegas Strip lost over \$1 billion. Even with that in mind, they recognize the need to invest in our educational system, have an educated workforce, and be good corporate citizens.

In 2003 we made the MBT a little more palatable with the health care deduction. As Mr. Ernaut has pointed out, by increasing the MBT on this industry and taking away the health care deduction, that is a double form of taxation in the bill. I do not know that any of us want to discourage employers providing health care for their employees.

As has been pointed out earlier this afternoon, the Affordable Care Act does require everybody to have health insurance. It does not require an employer to give it, so I am sure there will be some dialogue about that as the bill is debated further.

As we move toward technology, and we have seen it in this industry and others, there is less reliance on employees. Since this is an employee-based tax, it cannot stand the test of time over the next two to four decades.

I will just finish up by saying a couple things in response to some of the earlier testimony. It was not a \$300 million overpayment of the MBT that was given back in 2005. It was an excess of tax revenue of \$300 million. What is the distinction there? It was across all of our tax base—it was our sales tax, gaming tax, the MBT, and others—so it was not just the MBT that was returned to our citizens.

Nobody in the United States is copying us. Nobody else is putting together this tax and relying on it to fund their educational systems and their essential state services. That will conclude my testimony.

Assemblywoman Benitez-Thompson:

As I was driving in this morning, I had a call from a small business owner. I have been working hard to reach out to small businesses in the state, to get their feedback on this. This person happened to be in the world of professional cosmetology. We talked all the way through south Reno and Washoe Valley as I was driving in, and it left me with a paradigm of the distinction between the different types of policies we are contemplating. From the small business owners, I hear consistently that they want something that is simple. They want something for which they do not have to hire a tax attorney to figure out their liability. With other plans that have been proposed, when I share them with small business owners, there are a whole list of questions that come out

regarding pass-through, what is in, and what is out. For another proposal, the biggest concern was, how many Tax Department staff are going to be on hand to help answer questions as we figure out what we pay and how this works?

What I like about this, and what I think is so helpful for small business on this, is that it is so easy to digest. It is so easy to figure out. It does not require massive changes in their QuickBooks programs. It does not require them to confirm numbers through a tax attorney. It does not require them to burn too much energy to figure this out.

I feel that this choice before us is between a bill that is more broad-based—in that it is including more people who are paying the MBT—and friendlier to small business, and a bill that might be seen to be more supported by bigger businesses. I think that is something we have to work through. Maybe they will come together in the middle somewhere, but I cannot forget that I have to be responsive and go back to the small business people and help them, like the cosmetologist this morning, who does not have a lobbyist, who does not have an industry representative here. I know I have to be equally responsive to them, and that is just what I am carrying around in my head.

Vice Chairman Kirner:

We have two individuals who are signed in as neutral on A.B. 464. We will hear their testimony, and then go to the bill sponsor. We have a number of Committee members who need to be in other committees.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Las Vegas Metro Chamber of Commerce is an association driven by public policy, data, and transparency. We deeply care about this conversation and are engaged because we want what is best for our state, for job creation, and for the next generations of Nevadans.

As the largest and most broad-based business association in the state, the Metro Chamber fully supports reforming and modernizing Nevada's out-of-date tax structure. Our state requires dependable resources to fund education, invest in infrastructure, and provide the services we need, and we support this.

A lot of people are asking why the Metro Chamber has not staked out a position on the tax proposals. It is because businesses around the state deserve to know what the economic impacts of any tax proposal will be. The increase in the proposed tax plan is substantial, and at this point in time is designed to be absorbed predominantly by the state's businesses. It is fair and reasonable to

take the time to do a proper analysis on their behalf. The Metro Chamber is continuing to do its level best to determine how the various components of tax plans measure up in terms of good tax policy, and how they compare in terms of potential impacts to the various industries that exist within the state.

As we evaluate this and other tax proposals, we should consider, is this proposal based on sound tax policy? Is it relatively fair across industries, simple to understand, easy to comply with, predictable for businesses, transparent, and, most of all, will it provide long-term stability for our state? While it has adequately produced enough revenue to fund things we need such as our kindergarten through twelfth grade (K-12) education, higher education, and infrastructure, will it dependably be a revenue generator for the long term, not just the biennium? Perhaps most importantly, how will this plan affect economic development and business growth? Will it help or hurt job creation? Will it stimulate or deter business recruitment, retention, or diversification, along with any other economic effects?

These are important questions our business community needs and deserves to take the time to fully know the answers to. We need the opportunity to be informed of the competitive pros and cons in terms of the policy, the economic and financial implications of each of the proposals, and whether each one ensures the generation of sufficient revenue without imposing harmful impacts or unintended consequences.

The Metro Chamber will continue to work with this body as well as other stakeholders involved in this important discourse and hearing process. It is hoped that we will come to a reasoned and acceptable resolution across the board to meet the funding needs of the state during this session.

Tray Abney, Director of Government Relations, Chamber of Commerce of Reno, Sparks, and Northern Nevada:

I appreciate your indulgence and appreciate the snickers I received as I walked up here in neutral. Let me tell you why we are neutral on this bill. Every industry that you saw come up and support this bill and oppose the other bill are Chamber members of mine. Every industry you saw come up and oppose this bill and support the other bill are Chamber members of mine. In 30 of the categories in the BLF bill, I have members. I have some members who have told me that under BLF, they will pay millions more. I have others who have said that under the BLF, they will save money and pay less than they would under the current MBT, or an expanded MBT.

You folks know that I rarely come neutral, especially at this table, in this room. I am frustrated as hell. I get it. I have members all over the map. I am not doing that to whine, complain, or get sympathy but just to let you know where my members are coming from on this.

The reason I came up on this bill is because the focus is on the MBT, and frankly if we are going to have an MBT, it has to be broad-based. To Assemblywoman Kirkpatrick's point, I do want to correct the record. Bryan Wachter was also up here with me in 2009 and 2011, and I want to give him a lot of credit for being against that bifurcation as well.

Assemblywoman Kirkpatrick:

I apologize, but I remember you mostly hounding me. That was a good thing. I paid attention, fellows.

Tray Abney:

I did not want to take all the credit there. Bryan is much smarter at these things than I am.

Frankly, we made mistakes here in 2009 and 2011. The politics were great because we were going to cut taxes for small business. The politics were excellent; however, I do not think the policy was. We need to look at that.

If we are going to have an MBT, it needs to be broad-based. It cannot just punish one industry, like we do now with the banks, both with the higher rate and with the per branch fee. That is the only industry in the state that has that.

We have to remember that \$800 million of Governor Sandoval's budget is MBT based. Only about \$430 million is BLF based. So for all the talk about needing to eventually phase out the MBT, or do something different, that is a big hole to fill if we are going to phase out the MBT, and we need to put a lot of thought into that if we are going to move in that direction.

Now the downsides. You heard Mr. Ernaut speak very articulately about the issues with the MBT, and there are some. Our labor-intensive businesses in the Chamber membership have major issues with expanding the MBT and the way it is based. Mr. Ernaut used the example that I use a lot, with two different types of businesses, with 100 employees each, that could pay vastly different MBT rates. There are those, of course, with no payroll at all that still bring millions and billions of dollars to this state. There are legitimate issues with the MBT that should not be overlooked that we need to talk about. The Governor is not wrong when he says we need to find a way to broaden the tax base.

I will close with this. This is not the only leg of the stool we should be talking about. We need to be talking about property tax reform. I know it does not affect the State General Fund and it is a local government issue, but we have to talk about property tax reform and depreciation. We have to talk about sales tax on services and doing something with that. We have to talk about LET, which I know Assemblywoman Kirkpatrick has focused on a lot. It cannot just be this.

I know it is sometimes politically easy to talk about business tax, because a lot of Nevadans think they "do not pay it," but everybody has to have skin in the game, everybody has to fund education, and I hope that we do not just focus on the BLF and MBT and leave the others behind.

Assemblyman Nelson:

Do you agree with the budget proposals on the other side, on those numbers, as far as funding education? Forget about how we get there. Do you agree that all that is needed?

Paul Moradkhan:

I think that is an important point. Our organization does support revenue enhancements this session, so we are saying yes to revenue. We just want to make sure we find the right mechanism, and today is part of the vetting process we have been having the last several weeks in this building. Yes, we do support the additional revenue increase on the business community.

Tray Abney:

I will ditto that, absolutely. There is going to be a tussle about how many millions go to this program versus that program. We are not the same school system, school districts, or kids in public schools as were there in the 1950s. We have a different type of population, and sometimes those students take a lot more money to do it. We need to do it, and we need to do it right. I think Governor Sandoval has been a leader in proposing the spending for education, and even though I have a lot of members that do not like the BLF, at least we have a Governor who said, This is what I want to do and here is how I want to pay for it. I think that shows true leadership, and obviously there is disagreement with how to get there.

Assemblywoman Kirkpatrick:

In all fairness to both of the Chamber of Commerce folks, I have spoken with you and with many of your members for months. We have been at the table for months. I was just hoping today you would surprise me and we could have a real fistfight discussion about how we get there.

I like to always thank the people who do come to the table; whether we agree or disagree, at least we have the discussion. I apologize that I missed Mr. Wachter, because I think it was his freshman year that you two were together. I do hope we do not keep dillydallying and having no real discussion. It is mid-April. If we cannot figure it out in the next three weeks, then we should probably all just go home and start over.

I think there are other people in this room who want to have a discussion. I have spoken to well over 100 of your members from the south, and pretty close to that number from the north. I hope we get past all of this and actually do something.

Vice Chairman Kirner:

I see no others neutral on A.B. 464. I will ask the bill sponsor to come up for closing remarks.

Assemblyman Paul Anderson:

I appreciated Assemblywoman Benitez-Thompson's comments. You are my lobbyist, and we are those small business owners' lobbyists. The small businesses that do not have as much of a voice here—we are their voice.

I have to go back to the businesses I serve in my business and answer as to why I made a choice to go one route versus another. I think that is a critical distinction for a lot of us. It is not just my neighbors I have to talk to; it is the folks who really provide the success in my business and my livelihood that I need to answer to as well, which goes far beyond my district or my neighborhood. I think it is important.

I also believe that the reliability of the source of revenue is key and critical to this discussion, because the investment is critical and key. That is what we are tying this to. The MBT has been the most stable, reliable, and predictable revenue source for the state that we have come up with so far.

During the worst recession that we have experienced, we saw sales tax, gaming tax, net proceeds of minerals tax, insurance premiums tax, everything be extremely volatile and dip far below the point the MBT did, and that was in the worst recession. The MBT certainly ties to unemployment, which does not dip near as far as discretionary funds that we might spend on buying products and services that might get taxed.

So if the investment in education we are looking at is so critical, I think it is important we say the funding source for that investment is just as critical. We understand the MBT. We can predict it reliably. We can fund the investment from day one, and I think it is an important path we need to seriously consider going down.

With that, Mr. Vice Chairman and Committee members, I appreciate the opportunity to be here today, and thank you for your attention to the matter.

Assemblyman Armstrong:

As the Chairman of the Assembly Committee on Ways and Means and the Chairman of the Assembly Committee on Taxation are both small business owners, I would agree that there is quite a lobbyist for them this session.

I first wanted to talk about how this proposal is one portion of what businesses pay for taxes. We so often focus on how narrow it is, but businesses pay quite a number of taxes. Businesses pay property taxes. We found out businesses pay a lot of sales taxes. They pay a payroll tax. They pay fuel taxes, whether or not they are truckers. They pay the net proceeds of minerals tax if they are mining. They pay the insurance premium tax, if that is what they do.

The tax base is more broad when you take it from the big picture rather than just this one proposal. Some of the arguments against this were that maybe not everyone pays related to that strain on services. I am not talking about all services. This proposal was specifically, intentionally for education funding, and that is the proposal, not the complete strain on services.

It is true that the gaming industry pays a great portion of the taxes in the state, but I want to make the point it is also true they are the biggest beneficiary of the tax system in Nevada.

We heard testimony from Mr. Bacon, regarding the three legs of the stool and how this might stabilize that third leg. I would argue that Governor Sandoval's New Nevada Plan has more than three legs to its stool, and that we diversify our economy so that there is not a reliance on one, two, or three legs and we end up having an actual stable revenue source.

I wanted to close with a study from the Guinn Center on their analysis of A.B. 464, and to show that the average effective rate for a Las Vegas casino (line 7, [Exhibit E](#)) is actually lower under A.B. 464 than it is under S.B. 252.

Vice Chairman Kirner:

Thank you very much. We appreciate everyone's testimony today. This is a pretty involved bill, and very important to our state. I will now close the hearing on A.B. 464 and invite Assemblyman Armstrong back to take control of the meeting.

[Assemblyman Armstrong reassumed the Chair.]

[A study, "Nevada's 2015 Proposal for business License Fees" ([Exhibit K](#))], was presented but not discussed, and is included as an exhibit for the meeting.]

Chairman Armstrong:

Thank you, Committee members, for allowing me to present that bill. At this point, we are going into recess until the Assembly Committee on Legislative Operations and Elections and the Assembly Committee on Transportation adjourn. We are recessed [at 3:46 p.m.].

[The meeting was reconvened at 6:37 p.m.] Thank you, everyone, for being so patient. Tonight we are going to start off with the work session. Prior to beginning I will entertain a motion to suspend Rule No. 57, subsection 4, of the Assembly Standing Rules, which requires a committee to wait 24 hours before taking a final action on a measure. I want to clarify it is for the purposes of today's hearings.

ASSEMBLYMAN KIRNER MOVED TO SUSPEND RULE NO. 57 OF
ASSEMBLY RESOLUTION 1.

ASSEMBLYWOMAN DICKMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BENITEZ-THOMPSON,
HICKEY, AND NELSON WERE ABSENT FOR THE VOTE.)

The first bill on the work session today will be Assembly Bill 464, which was heard in Committee earlier today.

Michael Nakamoto, Deputy Fiscal Analyst:

As Chairman Armstrong noted, A.B. 464 was heard earlier this afternoon, and was sponsored by this Committee. The bill makes several changes to various taxes and fees imposed by the Department of Taxation, including repealing the branch bank excise tax and the MBT on financial institutions. The bill requires all employers, including financial institutions, to instead pay the MBT at a rate of 1.56 percent of all wages in excess of \$50,000 per calendar quarter, with the first \$50,000 in wages exempt from the tax. The bill specifies the MBT rate

applies to all gross wages, with no deduction allowed for eligible health care deductions, as is permitted under current law. The bill increases the fee for a state business license issued by the Secretary of State's Office effective July 1, 2015, from a rate of \$100 per year to a rate of \$300 per year, or \$500 per year for certain corporations. The bill requires the Secretary of State, between November 1, 2015, and October 1, 2021, to collect certain information relating to gross receipts or sales of entities that are doing business in Nevada, including information on whether these gross receipts or sales were generated inside of Nevada or both inside and outside of Nevada.

I will not go through all of the testimony of the people supporting, opposing, or neutral. The only other note that I would have is the bill was declared eligible for exemption by the Fiscal Analysis Division on April 6, 2015.

If there are any questions I would be happy to answer them.

Chairman Armstrong:

The intent is that this bill is not quite finished, and in my testimony I declared it a living document which still needs to be worked on. The motion that I would like to entertain at this point is to rerefer without recommendation to the Assembly Committee on Ways and Means.

ASSEMBLYMAN KIRNER MADE THE MOTION TO REREFER
ASSEMBLY BILL 464 TO THE ASSEMBLY COMMITTEE ON WAYS
AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BENITEZ-THOMPSON
AND HICKEY WERE ABSENT FOR THE VOTE.)

I will close the hearing on A.B. 464 and open the hearing on Assembly Bill 32.

Assembly Bill 32: Revises provisions relating to special fuels. (BDR 32-382)

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 32, for those of you who are looking on the Nevada Electronic Legislative Information System (NELIS), the work session document begins on page 2 of the packet ([Exhibit L](#)). The work session document ([Exhibit M](#)) is also available in your binders.

Assembly Bill 32 was heard in this Committee on April 2. It was sponsored by this Committee on behalf of the Department of Motor Vehicles (DMV).

The bill makes various changes relating to the taxation of special fuels, including revising the definition of "special fuel dealer" to include a person who sells liquefied natural gas (LNG) that is delivered into the tank of a motor vehicle, and reducing the rate per gallon on liquefied petroleum gas (LPG) and compressed natural gas (CNG), with incremental increases in these rates beginning in fiscal year (FY) 2017. It revises the conversion rate for LPG for the purposes of taxing this fuel. It provides a conversion rate for LNG, which currently does not exist in the statute. It specifies that the tax return submitted by a fuel dealer properly report all quantities of fuel sold in gallons.

The testimony on the bill was given based on the amendment to the bill, which is summarized beginning on page 3 of the work session packet ([Exhibit L](#)), or on page 2 of the [A.B. 32](#) document ([Exhibit M](#)). The amendment makes the following changes to the bill:

- In section 2, subsection 2, paragraph (b), the bill currently reduces the rate on LPG to 1.86 cents per gallon, with gradual increases of the rate beginning in FY 2017. These provisions would be deleted and instead be replaced by a rate on LPG of 6.4 cents per gallon effective July 1, 2015.
- Section 3, subsection 2, of the bill currently revises the conversion rate on LPG from 125 cubic feet per gallon to 36.6 cubic feet per gallon. This conversion rate would be further revised to 36.3 cubic feet per gallon.
- In section 4, subsection 2, the requirement that the return properly report all fuel sold in gallons would specify that it applies specifically to special fuel sold.

Based on testimony given by Mr. Enos from the Nevada Trucking Association and other individuals, Chairman Armstrong has indicated that the Committee may also wish to give consideration to removing the rate change for CNG in section 2, subsection 2, paragraph (c), of the bill, which would restore the rate to its current 21 cent per gallon. This was based on the testimony given by Mr. Enos that the taxpayers who were purchasing CNG are purchasing that gas at a rate of 21 cents per gallon, but because of the conversion issues that have been brought forward by Ms. Lietz, on behalf of DMV, they are remitting only 16.6 cents per gallon.

If there are any questions about the amendments or the bill I would be happy to answer them.

Chairman Armstrong:

I will entertain a motion to amend and do pass, with the changes proposed in Amendment 6009, and further amended to remove the proposed changes to the CNG rate in section 2, subsection 2, paragraph (c), and maintain the rate of 21 cents per gallon.

ASSEMBLYWOMAN DICKMAN MADE A MOTION TO AMEND AND
DO PASS ASSEMBLY BILL 32.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Assemblyman Kirner:

There is an item that has been dropped on our desk ([Exhibit N](#)). I assume this reflects the amendments of the motion that was made. Is that correct?

Chairman Armstrong:

That is correct.

THE MOTION PASSED. (ASSEMBLYMEN BENITEZ-THOMPSON
AND HICKEY WERE ABSENT FOR THE VOTE.)

The floor statement will be assigned to Assemblywoman Dickman. I will close the hearing on A.B. 32 and open the hearing on Assembly Bill 161.

Assembly Bill 161: Authorizes certain businesses to apply to the Office of Economic Development for a partial abatement from certain taxes. (BDR 32-699)

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 161, sponsored by Assemblywoman Bustamante Adams, was heard on February 19 in the joint meeting of this Committee and the Senate Committee on Revenue and Economic Development. It authorizes the Office of Economic Development, Office of the Governor (GOED), to grant partial abatements of sales and use taxes or property taxes to qualified businesses in Nevada that own, operate, manufacture, service, maintain, test, repair, overhaul, or assemble an aircraft, or any component of an aircraft, and that meet other requirements specified in the bill. A business that is approved for these partial abatements may receive an abatement of all local sales and use taxes, as well as the personal property taxes imposed on an aircraft and on the property used to own, operate, manufacture, service, maintain, test, repair, overhaul, or assemble an aircraft, or any component of an aircraft, for a period not to exceed ten years.

The testimony on the bill at the time of the hearing was primarily given by Assemblywoman Bustamante Adams as well as Steve Hill from GOED. There were no amendments submitted to the bill; however, the Chairman has indicated that consideration may be given to several amendments. One changes the maximum length of the abatements that may be given by GOED from 10 years to 20 years. Then there are several other changes that are listed on page 6 of the work session packet ([Exhibit L](#)), or page 1 of the work session document ([Exhibit O](#)) related to various changes for the eligibility of the abatements in section 1, subsection 2, and section 1, subsection 12 of the bill. That would make various sections in statute consistent regarding the eligibility process for the abatements.

The changes include specifying that the agreement between the Office and the applicant for the abatement state the date on which the abatement becomes effective, as agreed to by the applicant and the Office. This date must not be earlier than the date on which the Office received the application. There is specification in the agreement that would bind the successors in interest of the applicant for the specified period of the abatement. It would also define a "full-time employee" as a person who is in a permanent position of employment and who works at least 30 hours per week during the period in which the abatement is effective.

These particular amendments were originally proposed by Mr. Hill for Senate Bill 93 (1st Reprint), which is the bill relating to these abatements heard in the Senate. Those amendments were approved on March 10. Adopting all of the amendments on this work session document would make the language in A.B. 161 and S.B. 93 (R1) identical.

This bill was declared eligible for exemption by the Fiscal Analysis Division on March 17. I would be happy to answer any questions at this time.

Chairman Armstrong:

I would like to start by giving the bill sponsor a chance to make remarks.

Assemblywoman Bustamante Adams:

I wanted to let the Committee know, regarding the additional amendments on the second page, there is a similar bill, S.B. 93 (R1), and also some other abatement bills out there. In order to make them consistent, these were the provisions that were amended into S.B. 93 (R1), so they are included in A.B. 161 as well. This is for consistency purposes and additional accountability for those who are receiving the abatement.

Assemblyman Nelson:

I just want some clarification that with this part of the amendment, we are adopting the 20-year time period in S.B. 93 (R1). Is that correct?

Chairman Armstrong:

That is correct. This bill reflects the 20-year abatement, and not the 10-year abatement. That is one of the amendments.

Assemblywoman Kirkpatrick:

I do want to give a hats off to Assemblywoman Bustamante Adams, because during the interim she spent many hours on this particular bill. I do not feel there were enough individuals who supported the overall concept on both bills. I think by coming together and having the same language, the right people get the right credit.

Chairman Armstrong:

I will entertain a motion to amend and do pass A.B. 161.

ASSEMBLYWOMAN KIRKPATRICK MADE A MOTION TO AMEND
AND DO PASS ASSEMBLY BILL 161.

ASSEMBLYMAN KIRNER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
WAS ABSENT FOR THE VOTE.)

The floor statement will be assigned to Assemblywoman Bustamante Adams. I will close the hearing on A.B. 161 and open the hearing on Assembly Bill 316.

Assembly Bill 316: Revises provisions governing the taxation of occasional sales of firearms. (BDR 32-918)

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 316 was heard in this Committee on March 26 and was sponsored by Assemblywoman Dickman. The bill, as drafted, requires the Department of Taxation, for the purposes of the sales and use tax, to consider the sale of a firearm, including, without limitation, facilitating the transfer of a firearm from out of state, to be an occasional sale that is exempt from state and local sales and use taxes, unless the sale is one in which the sales price for the firearm is paid to a retailer or other person in Nevada who is a firearms dealer licensed by the U.S. Department of the Treasury.

As a result of the testimony that was given on the bill, primarily by Assemblywoman Dickman and Megan Bedera, there is a proposed amendment attached to the work session document (page 3, [Exhibit P](#)). It is Proposed Amendment 6144 to A.B. 316, which makes two changes to the bill.

The first change is that sections 1 and 2 are amended to specify that the Department of Taxation, for the purposes of the sales tax, shall not consider the delivery or transfer of a firearm from out of state to a federally licensed firearms dealer to be a retail sale made by that dealer, if the delivery or transfer is made to facilitate the transfer of the firearm from out of state in compliance with Title 18, Section 922, of the *United States Code*, and the sales price for the firearm is paid to a person other than the person delivering or transferring the firearm.

The way this is drafted, the bill would still have a use tax liability for that firearm from the person who is actually making the purchase and having it brought in.

Sections 1 and 2 of the bill are also amended to clarify that the federally licensed firearms dealer receives his or her license from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the U.S. Department of Justice, rather than from the U.S. Department of the Treasury.

I would be happy to answer any questions.

Chairman Armstrong:

I want to recognize our Legal staff for becoming pretty creative in finding a work-around to make sure this bill did in fact do what the bill sponsor intended and did not exclude the use tax portion.

Assemblywoman Dickman:

I would also like to thank the Legal Division, because they clarified any questions there were, as far as people thinking we were trying to exempt everybody from paying the tax, and that is not what this bill is about. We are very much in support of this amendment.

Chairman Armstrong:

Are there any questions? [There were none.] I will entertain a motion to amend and do pass, with the changes outlined in Proposed Amendment 6144 to A.B. 316.

ASSEMBLYMAN KIRNER MADE A MOTION TO AMEND AND DO PASS ASSEMBLY BILL 316.

ASSEMBLYMAN HICKEY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblywoman Dickman. I will close the hearing on A.B. 316 and open the hearing on Assembly Bill 366.

Assembly Bill 366: Revises provisions relating to the use of certain motor vehicle fuel taxes. (BDR 32-927)

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 366 was heard in this Committee on March 26 and revises provisions relating to the use of certain motor vehicle fuel taxes. The bill was sponsored by Assemblyman Silberkraus.

The bill makes consistent the provisions relating to the acceptable use of certain proceeds by counties, cities, and towns from certain fuel taxes imposed pursuant to Chapter 365 of *Nevada Revised Statutes* (NRS). The bill specifies that the proceeds that are distributed to counties, cities, and towns under current law may be used by these entities for the construction, maintenance, and repair of rights-of-way as defined in the bill.

When the bill was heard, the testimony was on an amendment submitted by Assemblyman Silberkraus, and that is Proposed Amendment 9859, which is page 13 of the total work session packet ([Exhibit L](#)) or page 3 of the work session document ([Exhibit Q](#)). It is the first amendment listed. The changes in that amendment were to remove the word "exclusively" from the definition of "construction, maintenance and repair" in section 3, subsection 1.

In that same definition, in section 3, subsection 5, paragraph (a), the amendment would specify that "construction, maintenance and repair" includes installing, maintaining, and repairing crosswalks, sidewalks "and pathways that are within the right-of-way."

Again in the definition of "construction, maintenance and repair" in section 3, subsection 5, paragraph (h), the amendment would specify that "construction, maintenance and repair" includes installing, maintaining, and repairing signs, "markings," and devices for the control of traffic.

The final amendment was in section 3, subsection 6. In the definition of "construction, maintenance and repair," the amendment would specify that the term includes "administrative costs."

Based on concerns with that last portion of the amendment, with respect to including "administrative costs" and the testimony given by Ms. Carole Vilardo and other people, a subsequent amendment has been proposed, and that is Proposed Amendment 6284 to A.B. 366, which begins on page 22 of the total work session packet ([Exhibit L](#)), or page 12 of [Exhibit Q](#). This proposed amendment includes the first three changes in the amendment that Assemblyman Silberkraus proposed, with respect to those particular changes. But then with respect to "administrative costs," it adds a new subsection 7 to section 3 of the bill, which would specify that "The payment of administrative costs that are directly incurred by a local government in connection with the construction, maintenance and repair of a right-of-way and that are necessary for, and directly incidental to, the completion of the project for which they are incurred" would be included as acceptable administrative costs for the purposes of the "construction, maintenance and repair" definition.

I would be happy to answer any questions.

Chairman Armstrong:

The intent of that clarification is that there are probably some administrative fees associated with some of these projects, but we wanted to make sure there was a direct connection between the project itself and those administrative costs. Are there any questions or discussion?

Assemblywoman Kirkpatrick:

I am much more comfortable with this, having a direct nexus and spelling it out.

Chairman Armstrong:

I will entertain a motion to amend and do pass A.B. 366, with the changes outlined in Proposed Amendment 6284.

ASSEMBLYWOMAN KIRKPATRICK MADE A MOTION TO AMEND
AND DO PASS ASSEMBLY BILL 366.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to the bill sponsor, Assemblyman Silberkraus. I will close the hearing on A.B. 366 and open the hearing on Assembly Bill 391.

Assembly Bill 391: Revises provisions governing the exemption from property taxes of certain property used for religious worship. (BDR 32-825)

Michael Nakamoto, Deputy Fiscal Analyst:

The final bill on the work session is Assembly Bill 391, which was heard in this Committee on March 24, and is sponsored by Assemblyman Hickey ([Exhibit R](#)).

Assembly Bill 391 expands the property tax exemption for certain property owned by a religious society or corporation to include parcels of land used exclusively for worship, including, without limitation, both developed and undeveloped portions of a parcel.

The testimony in support of the bill was provided by Michael Hillerby, Bishop Gene Savoy, and Reverend Rebecca Willis, on behalf of the International Community of Christ. There was testimony neutral to the bill from the Washoe County Assessor, Michael Clark, and the Chief Deputy Assessor, Joshua Wilson. There was no testimony in opposition and there were no amendments submitted to the bill. I would be happy to answer any questions.

Chairman Armstrong:

Assemblyman Hickey, do you want to make any comments?

Assemblyman Hickey:

I think it is pretty clear. I would like to remind the Committee that although the Assessor, Michael Clark, was neutral, I think his testimony could be interpreted as a positive neutral.

Chairman Armstrong:

I will entertain a motion to do pass A.B. 391.

ASSEMBLYWOMAN DICKMAN MADE A MOTION TO DO PASS
ASSEMBLY BILL 391.

ASSEMBLYMAN KIRNER SECONDED THE MOTION.

Assemblywoman Bustamante Adams:

I appreciated the International Community of Christ church coming forward and I do trust them. I think they are sincere in their efforts. I am just concerned that we are not defining worship and we are not defining church, or at least I do not remember in my notes, so I would like to reserve my right to change my

vote on the floor, but I will support the bill. I am just concerned about bad actors. I think this church is legitimate, but I am concerned other people would abuse this provision.

Assemblyman Nelson:

I would like to commend Assemblyman Hickey for bringing a religious bill that did not have any controversy, unlike the one I tried to bring.

Assemblywoman Neal:

I ditto Assemblywoman Bustamante Adams's comments.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
WAS ABSENT FOR THE VOTE.)

Chairman Armstrong:

The floor statement will be assigned to Assemblyman Hickey.

I will close the hearing on A.B. 391. That ends our work session. We are going to pull Assembly Bill 380 from the hearing tonight, and we are going to hear Assembly Bill 392 and Assembly Bill 393. I will now open the hearing on A.B. 393.

**Assembly Bill 393: Revises provisions relating to the Live Entertainment Tax.
(BDR 41-591)**

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1:

Thank you for allowing me to present these two bills today. I wanted to start with Assembly Bill 393 because I think that most of the folks behind us are interested in that one more than Assembly Bill 392.

As a reminder, I did come before this Committee earlier this session to conceptually talk about the Live Entertainment Tax (LET), what it meant to the state, and what it meant as far as how it was implemented, and I gave you a pretty good historical picture with politics, rather than policy. This has been an effort to clean this up since about 2005.

The reason there are two bills is to separate them so people have a clear picture of what is affected on gaming properties and what is affected on nongaming properties; however, there has been more confusion by trying to do it that way. The goal was to clean up the current language we have in statute.

I realize there are some technical amendments I need to make on A.B. 393. My hope is to have a high-level hearing and have some more time to work on it in the Assembly Committee on Ways and Means, because I do think it is a key piece of the policy we have within our state that we need to address once and for all. This will not be my first time, but I have learned from all of the things we should and should not have had in there. I am working with Mr. Burnett, because in gaming, he is the one who actually has to implement it. He has seen all of those different troubled pieces. Senator Lipparelli has Senate Bill 266, which addresses portions of it. It was very helpful, with him serving on the State Gaming Control Board, so we want to continue to work and fine-tune A.B. 393.

I do know there are some folks here who would like to offer amendments. I am open to all discussion, and I hope to have a work session if the Committee allows me to move it forward to the Assembly Committee on Ways and Means sometime this week. The goal is to broaden the base and lower the rate so we have a consistent and simple tax policy.

We heard tax all day today, and that is standard tax principles, best practices across the nation. We are unique, as far as how we have things in our state. Not every state has gaming, entertainment, and all of these great outdoor events. The goal was to try to clean up the language, broaden the base, lower the rate, and include everybody.

Currently it is very convoluted as to who is in and who is out. I go back to my description of Carson Station. They do beer pong one night a week and they have a little yellow piece of tape. They say if you are within this yellow piece of tape you are subject to the LET, but if you stand on the outside of that tape you are not. The truth, in layman's terms, is that the drink on the outside of that tape is about \$1 cheaper than the drink on the inside. I think we have to get away from having tax policy like that.

I am happy to walk through the bill. The key component of the LET, in my mind, is talking about the admissions piece. I think that times have changed and we need to get away from the word "entertainment," because, in my mind, entertainment is different from what it is for somebody else on the dais, or somebody standing behind me.

This is really about a luxury. This is about people who can afford to go and spend their discretionary dollars on things that are important to them, or things that make them feel better, so this is about calling it a luxury discretionary spending tax.

It is a luxury if you can afford to go to a show at \$200 per ticket. Another \$8 probably is not going to hurt you, because you are not looking at that. You have a goal in mind. These are discretionary dollars, because only discretionary dollars can be spent like that; they do not come out of your monthly budget, and this is a spending tax. This is very consistent with Florida. A little over 35 states currently have some type of admissions tax.

I learned some valuable lessons last session on things that could be poison pills, that could cause more heartburn than they are worth. I will tell you gaming is much different than things outside of gaming.

I do not claim to be an attorney, so I want to be careful how I say this, but currently the statute says that if you are on a property that is zoned for gaming, you are subject to this particular luxury discretionary spending tax. That is currently what the law says, so it is separated out. If you open up the bill, you will see that the first 13 pages are all new language, and that is because we are focusing just on the gaming properties. That is why you will have that section of the law, Title 41, that has to do with just gaming. In the back of the bill you will see many strike-outs when it comes to Chapter 368A of *Nevada Revised Statutes* (NRS), and that is because those things are considered nongaming and they would be in the other bill, A.B. 392.

This is meant to include everybody. This is meant to make it easy for people to interpret and to make it simple for people to fill out the information.

Chairman Armstrong:

I want to commend you on the work you have done on the LET, and the work you have put in through numerous sessions. I know this has been a passion of yours, and I have committed to working with you on this as well, making sure it is a policy that makes sense and is acceptable for everyone.

Assemblyman Kirner:

The purpose of my question is clarification. You are saying this is a work in progress, and you imagine that there might be some cleanup between here and the Assembly Committee on Ways and Means.

One of the things we heard earlier, in a presentation, was the idea of taking entertainment tax, luxury tax, and changing it into a sales tax. Obviously this is not a sales tax. I know there is a difference between what the state gets and so forth, but our counties and cities, particularly counties, are hurting as much as others. I would like to hear your thinking of why you stuck with this approach instead of making it a sales tax.

Assemblywoman Kirkpatrick:

The current tax structure has three components to it. It has food, alcohol, and merchandise, and then the tax. What I learned the hard way is that the bulk of those dollars generated for this particular tax come through food and alcohol.

With this bill, I am taking out merchandise. I think that is the first step. At some point you want it to just be a solid rate across the board, based on admissions; however, I will not be here long enough to see that through, but I am pretty sure there are many of you who will ensure that we get down that road.

Food is 25 percent of our current LET. In 2012, to give you an example, \$125 million came from the gaming sector and only \$11 million came from the nongaming sector. If you took that \$125 million and removed 25 percent for food, and then you took out another 15 percent for alcohol, it would be a huge budget deficit. The goal is not to have a budget deficit. I would like to put in some type of trigger that makes it work in that direction. I think you have to take out food and you have to take out alcohol, but I think that it is a project over time in order to lower the rate.

In my mind, the first step is lowering the rate, to ensure what the rules are, to make it simple, and then to take out merchandise. The goal is to have the revenue come in the same by lowering the rate. Then, next time, if there is any additional revenue, there is no secret that on the state side there are many reserves that are empty. The Legislature will have a great idea of how this is working, and then work to take out the food, or to even lower the rate again, but I think you have to take out the food and the alcohol before you can lower the rate.

That is why it is not a sales tax, because it hinges on food and alcohol, which are the biggest portion of what live entertainment is. It does not pencil out otherwise.

Assemblyman Trowbridge:

I appreciate your work on your 39-page document. It does not surprise me that there are one or two commas in the wrong place. I appreciate your willingness to get this out of this Committee and over to the Assembly Committee on Ways and Means, and in the interim have a work session. I would simply like to ask you to address in that work session what might be some unintended consequences of your bill, which relate to some of the current activities that go on; for example, the San Gennaro Feast, the Fremont Street Experience, some of the malls that have holiday music during appropriate seasons, and of course Broadacres. With some of these

activities, the live entertainment is incidental to the purpose of the event. I would just ask you give that a proper vetting, at the right time and the right place.

Assemblywoman Kirkpatrick:

On A.B. 392, we can absolutely discuss that. I started working on the language a year and a half ago. It is probably one of the most complicated tax policies we have, and I am trying to make it simple. I made it more complicated by trying to make it simple for people to read, but if I am fortunate enough to have this pass, it will be very clear within our statute. It will read similarly to the way Florida's does, so a sixth grader could read it and understand if they are in or they are out.

We have had those kinds of discussions. If I am fortunate enough to get it out of this Committee and into the Assembly Committee on Ways and Means, I would encourage anyone to participate, because going forward, people need to understand the history of this, and not learn the way I did that it was done on a napkin on a late night in 2003 just so people could go home. That is the truth of how a good portion of this came about. I would encourage any of you to be part of that, because with term limits, legislative history is being lost.

To address some of your concerns regarding the San Gennaro Feast, it would not fall under A.B. 393, because it is not under gaming, but it would fall under A.B. 392. I believe it is a nonprofit, which would make it exempt. With the Broadacres issue, I have told Mr. Gordon that I am happy to work with them on their issue, and Broadacres as well. I have been in Nevada a very long time, and Broadacres is something we used to do on a Saturday morning. It has changed, because times have changed, and that is my point on why we need to make this policy as broad as possible, because entertainment changes.

This all started back in the days where you had the lounge shows. They would entice people to go gamble, and then go eat, and then have a few cocktails. The younger generation today, they spend hundreds of dollars for bottle service. I could not imagine spending my entire check on having a few cocktails, but that is what they want to do, and we should work to ensure that they are paying their fair share, for the long-term benefit of our state.

I am happy to address those issues, and I have been very honest with everybody. I would address their issues, because there are not many perfect bills in this building, and if you are not willing to have the discussion then you should not be in the business. I am happy to work with them. I never assume that it can go any further, but if we get there I am happy to have you at the table, as well as Chairman Armstrong.

Chairman Armstrong:

Are there any other questions? Seeing none, at this point we will move to those in favor. Is there anyone you would like to testify first?

Assemblywoman Kirkpatrick:

I have been working with Mr. Ferraro with the Nevada Resort Association. He has unfortunately been stuck with me since about 2009. I would like to invite him up first.

Greg Ferraro, representing Nevada Resort Association:

I am not stuck with her, although we have had some pretty late nights on this subject matter. Assemblywoman Kirkpatrick has provided extraordinary leadership on an extremely technical and complex body of law, and she is to be commended for her past efforts and her efforts moving forward.

The industry picks up where we left off. I sat at this table on May 31, 2013, when Assembly Bill No. 508 of the 77th Session was introduced by Assemblywoman Kirkpatrick. We said we have made progress, there is still work to be done, and we will address it in the next session, which is where we find ourselves today.

Most pointedly, this area of law that applies to gaming is overly ambiguous. It has created all kinds of unnecessary problems between the taxpayers and the regulators. It is totally and utterly subjective, and it needs to be fixed. I approach you today in support of getting it fixed.

We have far too many problems in an area of law that would otherwise be rather simple under Assemblywoman Kirkpatrick's proposal, and that which was heard today in the Senate by Senator Lipparelli. I would submit to you that good tax policy is predictable and certain, and what we have today is neither. What we have before you is the start of what would be good tax policy as it relates to those who pay this tax today.

We have work to do. Senator Lipparelli agreed earlier, as did Assemblywoman Kirkpatrick, to work together in a working group, for lack of a better term. There are a lot of interested parties here, particularly on the broader issues that might be addressed in A.B. 392, but as it relates to S.B. 266 and A.B. 393, I would agree in creating more time to get this right—not to rush it, but to get it right.

I was here in 2003, when this law was cobbled together, and cobbled is being generous. In the time since, it has created lots of problems and challenges that I think you will even hear from the regulators are confounding to them as well.

With that, Mr. Chairman, I can answer questions. I am fairly familiar with this area of work, but I do not want to belabor the point. It is getting late into the evening, so I am happy to answer any questions.

Chairman Armstrong:

Thank you, Mr. Ferraro, and I also just wanted to reflect that I agree we do need tax policy that is predictable and certain.

Assemblywoman Bustamante Adams:

What do you think are two or three major issues still left to work out?

Greg Ferraro:

I will answer it a little bit differently for you, and it might shed some light. I think we have determined what it does need; and it needs the bright-line test. If you do not charge an admission, the tax does not apply, and it bears repeating, because it seems so easy to jest, but it has been a serious challenge.

If the admission is not collected, the tax does not apply. That is a great place for us to start. I think that also is the principle and the premise of A.B. 392 as well, but for A.B. 393, if we start there, we are a long way toward home.

I know Senator Lipparelli has some additions he wants to address, due to his experience at the State Gaming Control Board, and I think there are some technical issues related to some of the other sections later in the bill, related to reporting, that we want to get just right. Again, I think we are on the way home if we embrace and accept the concept that the admissions test is the way to go in this tax.

Assemblywoman Dickman:

I need some clarification. As an example, I went to Mickey Gilley's for dinner and they charged a 10 percent entertainment tax, but we were nowhere near any entertainment. Would this clarify that, having an admission fee?

Greg Ferraro:

It would give an abundance of clarity. If they did not charge you admission, the tax would not apply.

Assemblywoman Kirkpatrick:

I am looking forward to hearing the other amendments and having the discussion. It is not personal. It is trying to get good tax policy, to make it simple and easily enforced. That is our biggest problem in our state. We make it complicated and it is hard to enforce, and we always spend a lot of time going back. I appreciate you giving us this opportunity.

Chairman Armstrong:

Hopefully we can make it simple and well understood. Is there anybody else who would like to speak in support of A.B. 393?

Russell Rowe, representing AEG Live:

I am here representing AEG Live, which is a worldwide entertainment company that owns and operates venues across this country, across the world, and in particular in Las Vegas. They have several venues in Las Vegas, ranging from smaller venues in the 1,800-seat range, to much larger venues, and they are currently 50-50 partners in the arena being constructed by MGM Resorts.

There are obviously a lot more details in this bill to go through, and as Assemblywoman Kirkpatrick indicated, there will be some additional work being done on it, but without going into those types of details, one of the things she touched upon that I would like to expand on is the entertainment market. When this statute came into being in its current form, events and entertainment, particularly in Las Vegas, were much different than they are today. The industry itself has innovated and grown in terms of types of venues, seating capacities, and locations of venues, indoors and outdoors; we have a tremendous variety of entertainment. We do not have a tax policy that treats all of those different varieties in a fair and equal manner, so you end up with tax policy where some venues pay more, some venues pay less, some venues do not pay anything at all, and it creates an uneven playing field that we think this legislation goes a long way toward addressing.

The other thing it does is allow the market to innovate and grow, and the tax policy will grow with it, rather than creating further disparities as innovations in the industry continue to occur.

For that reason, AEG Live stands in support of this bill, and we would like to continue working with the bill sponsor and with the committees to make it the best we can.

Chairman Armstrong:

Is there anyone else who would like to speak in support of A.B. 393? Seeing no one, we will move to those in opposition to A.B. 393. Is there anyone who would like to speak in opposition to A.B. 393? Seeing no one, we will move to those neutral on A.B. 393. Is there anyone who would like to speak neutral on A.B. 393? Seeing no one, Assemblywoman Kirkpatrick, do you have any final comments?

Assemblywoman Kirkpatrick:

I am appreciative of the gaming side going forward. There have been working groups, and I want to thank AEG Live. They have been at the table for some time. Live Nation has been at the table. So many of the folks have been at the table. They just consider that we need two more meetings to get through this.

Chairman Armstrong:

With that I will close the hearing on A.B. 393. I will open the hearing on Assembly Bill 392.

Assembly Bill 392: Revises provisions governing taxation. (BDR 32-585)

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1:

This bill is for all nongaming properties, to determine what are luxury discretionary spending dollars. As I said earlier, entertainment has changed as we know it today, and what are big exciting events are the outdoor festivals. Many events include outdoor festivals now. They are doing things outside of the property. This does go back to ensuring there is admission. This does have some specific exemptions.

One thing I learned last session on this particular bill was not to penalize, and the yoga folks made the very best case, because there were memberships to health clubs. I took the definition from Florida, and it was very successful in Florida, but I did not realize how many people use exercise as their way of healthy incentives. They use it for wellness, so there were a whole variety of reasons. This one is a little more detailed on making sure that we are not including folks that are participating in everyday events. What we do not want is for a family to not be able to take their family to a movie, or go bowling, or do those types of things, because I feel you are participating in it. However, it is different if you are going to a fancy bowling tournament and you are paying an admission to get in; then you should be subject to it. But if you are participating in things such as skiing, those types of activities, we want to ensure that people can enjoy outdoor activities, as well as indoor activities.

It also addresses governmental entities. It is not intended to charge governmental use when you go to the municipal pool in the summer time. What it does include is membership dues. I have been working with the golf folks. They definitely are at the table to be part of the solution, which is a lot further than we were last session. Last session I brought up golf and I thought I was going to get clubbed with a 9-iron, because there were lots of folks in here that I apparently made very mad. I do not golf, and I did not realize how many people did.

Chairman Armstrong:

I golf.

Assemblywoman Kirkpatrick:

We did try to address all of those issues this time around, but with entertainment as we know it changing, we want to ensure that we are able to fit within the mold as entertainment changes. Disc jockeys were super important in 2012, and now it is something different. Entertainment is changing much faster than it did when I grew up. Things stayed for a little bit longer, but with technology and all the exciting stuff you can do, the younger generation gets bored quickly, so they want something new. This would allow it to be broad enough to encompass any new direction. Then you would not have to be a legislator coming here every two years trying to fix something.

This would address Assemblywoman Dickman's question, which is one of the concerns. Currently within the bill it had said if the music was louder than the conversation, you were subject to the Live Entertainment Tax (LET), which is probably what you were paying that 10 percent for. This changes all that and makes it subject, very bright-line, to just entertainment.

I could go to a coffeehouse and the music could be louder than my conversation, but I do not know if that is ambient music. What you do not want to do is not encourage people to get out, to be part of the community, and to enjoy many of those small venues where you can relax.

Chairman Armstrong:

I guess I would say that oftentimes golf is not very relaxing; it is more frustrating.

Assemblywoman Neal:

I had a question on section 5. It says "or other monetary consideration." What would that be?

Assemblywoman Kirkpatrick:

This bill does broaden it to ensure that escort services, sightseeing tours, all of the folks that currently are not participating be brought into this; we looked at some other states that did include it. It does include NASCAR; it does include any outdoor venues.

It does not include nonprofits. I do want to revisit the definition here, because I think that it is a bit broad, and I do not want to continue to let the same people form a nonprofit corporation so they do not have to be subject to it. I do think we have a lot of small, good nonprofits that are for specific reasons that should be exempt from it.

Assemblywoman Neal, I did not answer your question, because I do not know the answer. Maybe our Legal Division staff can tell us what "or other monetary consideration" would be.

Assemblyman Kirner:

You may have already answered my question. It has to do with the nonprofits, like a school that may have a play and charges \$2 for the parents to come and watch their children, or something like that. They would be exempt from this.

My other question you may have answered in your previous testimony on Assembly Bill 393; it is regarding the swap meets. Those are excluded, is that correct?

Assemblywoman Kirkpatrick:

Currently they are not excluded, and let me explain why. I have been doing this same bill for many sessions now and I have learned through the process that once you start excluding folks, we get right back to how 2003 happened, where you had certain exemptions that came about at the time. What I have said to all folks, because I have certain sports that would like to be excluded, but for policy discussion, if we exclude, then we have to make a policy discussion to exclude all. I understand Broadacres has a little bit different reason. I have met with them. I exempted them last time. I understand the competition they have, but currently within this language, just to be honest, it does not exclude them, but that does not mean that would not change based on discussions of a working group.

I just want to be honest, because I could say yes, they are excluded, but it would not be truthful. We have had several discussions, and Mr. Gordon and I have been talking for probably nine months on this issue. In this particular bill, in order to bring everybody to the table, I have been asked to exempt hockey, basketball, swap meets, NASCAR, and outdoor entertainment, but in order to have an honest discussion on this particular policy, everyone has to be in to begin with.

Assemblyman Kirner:

You would rename this from the entertainment tax to a luxury tax. That is the only way I can see, for example, on golf membership. That is certainly not entertainment. You might be able to argue a golf membership is some sort of a luxury.

Assemblywoman Kirkpatrick:

That is the exact point. Entertainment has changed, so golf may be entertainment in somebody's eyes, and we have heard that. Some of the memberships, just to give you an example....

Assemblyman Kirner:

You are talking membership, not a round of golf?

Assemblywoman Kirkpatrick:

Right, we are talking memberships. We had one that was a \$10,000 initiation fee, \$755 for monthly club dues, \$25 per month for capital reserve fee, and \$200 quarterly. In my mind, that is a luxury if you can afford to golf at that kind of venue. That is a luxury that is consistent with the way Florida does it, and we know that Florida is very senior friendly and they have lots of golfing. I have spoken with their tax department on numerous occasions.

Assemblyman Kirner:

I have three of those kinds of clubs in my district.

Assemblywoman Kirkpatrick:

They are at the table. We have discussed that.

Some of the event destinations that happen outside, in other states, including the Electric Daisy Carnival in Chicago, they pay up to 12 percent, with 9 percent to the city and 3 percent to Cook County, plus licensing fees on top of it, and their tickets sell out relatively fast. They are having an event in Washington, and I believe it is \$218 for one night to go to this venue; but in Las Vegas, to have that very same venue, you can do three days for a little less than \$600, or you can do one night for \$287. There is a brand that Nevada has that brings value, that we need to capitalize on, because we have spent a lot of time trying to make that brand.

Many of the nightclubs are now moving outdoors. They make \$85 million a year in revenue. There are a lot of other businesses that would like that same revenue source, but that is why we are Nevada, and that is why we can do that.

To your point, we are not trying to get to the basic service that Nevadans do to enjoy life, but if you can afford to spend for that luxury, go and do these things, then you are doing better than most. The truth be told, on the gaming side of it, at the very least, over 80 percent of it is paid by our tourists, and if locals can afford to go do those things, then they should be subject to the same thing.

On the nongaming side, this just encompasses everybody who has not been at the table, ensures what that bright-line test is for the long term, and allows us to grow. This is the one revenue source that has grown. I think last year there were a couple of times when we saw it was 13 percent, so this is the one thing that grows, and it can change quickly in order to adjust to what that is.

Assemblywoman Bustamante Adams:

I am not sure what section it is, but for entities like the Las Vegas Convention and Visitors Authority (LVCVA) that run themselves as a nonprofit, I am not sure if that is covered under this one. How would that work? Would the LVCVA then have to collect and remit the admissions tax? Could you please clarify that for me?

Assemblywoman Kirkpatrick:

What we found last session is that people had set up nonprofits, so the LVCVA set up an additional group called Las Vegas Events Inc., and I have spoken to Rossi Ralenkotter at the LVCVA, so he knows, so it is no secret, that they have to be subject to it. They had a little over 110 events that were not subject to the LET that were actually within the same definition as everybody else, but because they were considered a 501(c), they were not included. The current language does state 501(c), and that is something we definitely want to tighten up.

In the past, with the two Assembly bills we had last session, we made it clear they had to get preapproved for their nonprofit through the Department of Taxation, because the Department has a specific way to do that. There are some little ones, like kids' rodeos and those types of events, that we are not trying to get because those are participatory sports. We are trying to ensure there is a level playing field in the competitive world.

Chairman Armstrong:

I would just follow up to qualify that, in section 19, subsection 2, paragraph (b), that is specified that it is for 501(c)(3)s.

Assemblywoman Bustamante Adams:

In sections 4 and 5, I understand that escorts are now being captured under A.B. 392, so my question is, for the counties that do allow other activities under being an escort, would the other activities be covered by another tax in the counties that allow for prostitution?

Assemblywoman Kirkpatrick:

George Flint has been here many years wanting to participate in the tax process, and if his business model falls under this bright-line, then they would be subject to the tax. I do not want that to be the headline tomorrow, because it is a much bigger issue, and in the past that has exactly been the headline. I have told Mr. Flint over the years if his business model falls within the bright-line test, he would be subject to it, and the trigger is on admissions.

For instance, we believe at some of these events that you go to there is an admission, and in some cases you have to buy two drinks and a T-shirt to get in. We believe that should be considered part of an admission charge.

Chairman Armstrong:

Are there any other questions? [There were none.] Would you like to bring up anyone first?

Assemblywoman Kirkpatrick:

There are plenty of them who have amendments.

Chairman Armstrong:

We will move to testimony in support of A.B. 392. Would anyone like to speak in support?

David Goldwater, representing Las Vegas Motor Speedway Fan Advisory Council:

I am representing the Las Vegas Motor Speedway fan association group. We would like to commend your Committee, but in particular the sponsor of the bill, Assemblywoman Kirkpatrick, who has worked with us over a number of years.

I, too, was here in 2003, having chaired and been a member of this Committee, and she is correct in saying that this law was put together in a hara-kiri kind of way. We have all suffered because of it, but she is thankfully bringing that suffering to a close.

It is true in this bill that the exemption that was provided for the one NASCAR race—not for the Las Vegas Motor Speedway, which collects live entertainment tax on every event except for the NASCAR race—is repealed in this proposed bill. However, Assemblywoman Kirkpatrick has recognized the economic benefit of that incentive, so she has challenged the speedway to attract another NASCAR race with language that grants an exemption if another NASCAR race is brought to our city.

On the Nevada Electronic Legislative Information System (NELIS), there is a proposed amendment ([Exhibit S](#)) that clarifies that exemption language. The current law refers to the Nextel Cup Series, and this race is no longer a title sponsored by Nextel. The series is now sponsored by Sprint, and that will no longer be the case after 2016. This amendment proposes to delete that language. I hope you can consider this amendment.

This is an aerial view ([Exhibit T](#)). A picture is worth a thousand words and usually around this place is accompanied by a thousand words, but I will try not to have that happen. Many of the things Assemblywoman Kirkpatrick referred to as growing are activities that many people who are affluent and doing well participate in. This happens to be a sport that is challenged at this time. This is an aerial shot of the 2015 race, and as you can see in the lower left-hand corner, there are spots that tickets are no longer purchased for. The demand is ebbing. We are seeing fewer and fewer people participating in viewership of this race. I submit to the Committee if we could get 8 percent more, I think they would unfortunately probably charge it in the ticket price. I think NASCAR fans are having a more difficult time than people attending day clubs and escort services.

I would be happy to answer any questions you have.

Assemblywoman Bustamante Adams:

You are attributing the lack of attendance to the lack of consumers, but could it be something else? Someone made a statement about it takes an act of God to actually get out there in a reasonable amount of time. Why invest the amount of resources and money to get out to that area when it is just so troublesome?

David Goldwater:

There are so many factors that are creating a decline in attendance out there. I bring this to your attention only because when the race first started, I think it was in the late 1990s, those stands were packed. It was a sellout. You could not get a ticket and they sold out immediately. It is worth noting, as we consider this tax policy, the trend. The trend is going down, and NASCAR fans

are not all very affluent people. They save all year. They come from all over the country. These tickets are very expensive, and for these people, with an additional tax, they feel it, they notice it, and it matters.

Chairman Armstrong:

Does anyone else want to speak in support of A.B. 392? Seeing no one, we will take those who are in opposition to A.B. 392.

Garrett Gordon, representing Broadacres Open Air Marketplace, LLC:

To give you a little bit of background, Broadacres is located in North Las Vegas. It is an approximately 50-acre swap meet, open on Friday, Saturday, and Sunday, with approximately 1,000 vendors each night. A \$2 fee is charged to get in. That fee is used for parking lot maintenance and security. There is a band that plays periodically during Friday, Saturday, and Sunday. Certainly we argue that the primary purpose is a shopping mall, under the shopping mall exemption, and that the band playing may be a marching band from a local high school, or another type of band. It is not for the entertainment that the fee is charged.

Prior to the owner constructing the stage, Mr. Greg Danz went to the Department of Taxation—and this document is on NELIS (page 2, [Exhibit U](#))—to request and to get an opinion on whether or not, if he built a stage and did have music playing for a portion of the days and times they are open, it would in fact trigger the LET. The answer, according to the Department of Taxation, was no. Under the shopping mall exemption, as identified in *Nevada Revised Statutes* (NRS), 368A.200, subsection 5, paragraph (j), he would like to continue operating as is, operating under the exemption of a shopping mall. The amendment that is on NELIS (page 1, [Exhibit U](#)) would reinsert that exemption in subsection 5, paragraph (j), regarding the shopping malls.

I do appreciate the sponsor working with us. She has always had an open door. We have been talking to her for months, as well as during the last session. I understand this bill will likely, with the Committee's indulgence, go to the Assembly Committee on Ways and Means. There will be working groups. We appreciate being at the table and working with the sponsor on the proposed amendment.

I am happy to answer any questions.

Chairman Armstrong:

You are in support of this moving forward, as long as we have working groups to address some of these issues?

Garrett Gordon:

Yes, I am supportive of it moving forward. If it would move forward out of this Committee with our exemption, that would be great, but if it moved forward in the spirit of a working group in the Assembly Committee on Ways and Means, that of course would also be acceptable.

Assemblywoman Bustamante Adams:

I did appreciate the owner of Broadacres coming by to educate us about the business model. My question to him was that there is regular shopping, but also during the weekends there are times where they do charge an admission fee for the concerts only. There are a handful of vendors. That is a totally different business model. I think you need to work on an amendment to make sure that is subject to this. I agree with your shopping mall exemption for the most part, but on those weekends where the concert is the featured entertainment, that is not shopping. I would suggest you work on that, in whatever group we are going to have, but it is not shopping.

Garrett Gordon:

I think what you are referring to is when Mr. Danz met with you he indicated that three to five times per year they may have an actual concert, and he 100 percent agrees that charging an admission to get into that concert would fall under the LET. It just would be for his day-to-day operations, where it is not a specific concert but it is just background music playing, folks shopping, that would not. We are in support of a distinction between our day-to-day operations versus a special concert, if and when he ever holds one.

Assemblyman Nelson:

Are you saying that but for the exemption letter, your client would not have built the stage?

Garrett Gordon:

Yes, and I would say that is indicated by the date of the request of opinion from the Department of Taxation. This occurred prior to constructing the stage. He did rely upon this exemption letter and constructed the stage shortly thereafter.

Chairman Armstrong:

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

Chris Ferrari, representing Granite Gaming Holdings:

We are here today in opposition to the bill. We have been working with Assemblywoman Kirkpatrick throughout the interim, so definitely I appreciate

her efforts to date. We are specifically opposed to section 19, subsection 2, paragraph (h), which takes the current exemption, the 200-seat threshold, down to 50 seats. We are not here today asking for a new exemption, but to keep the existing exemption in place for venues of 200 seats or less.

I would certainly defer to Assemblywoman Kirkpatrick on the intent for putting that in ten years ago, but based on testimony during the time it was indicated to obviously accommodate small business, and if that is not the case, I would again defer to her institutional wisdom here.

As I said, we participated in talks with Assemblywoman Kirkpatrick, different parties that have appeared before you today, large gaming entities, large ticket brokers, et cetera, and then my client, which is a much smaller business operation.

If we are looking at moving the exemption for the 200-seat threshold, for an example, if a small business had revenue of \$1 million and a 10 percent profit margin, that profit margin could be entirely wiped out by a 10 percent LET if implemented. What we spoke with Assemblywoman Kirkpatrick about, and to the broader group during the session, was if the LET is going to be applied to those smaller businesses, to look at something that is graduated in the manner that gaming, mining, municipal business licensure, and other taxes are to ensure that they are paying their fair share, which my client is more than happy to do, but just not in the manner from 0 to 10 percent, because that is very significant for a small business.

Again we are very ready to continue working with Assemblywoman Kirkpatrick and interested parties, and appreciate all of your time here this evening.

Chairman Armstrong:

Because of the way this is being described, this is an admissions tax, so I am not sure if that 10 percent profit margin really applies if it is a pass-through tax based on the admission charge. Can you clarify that a little bit?

Chris Ferrari:

We did discuss that. My client has an unrestricted gaming license and owns two gaming properties in the downtown area. He also owns an adult entertainment club on Fremont Street, to which this would specifically apply. If it would be a pass-through, as the previous speakers have indicated on a drink minimum or something like that, that would constitute an admission, so I think that was still kind of in the dialogue phase, and I am not quite sure how that impacts us, but we will run specific numbers there too.

Chairman Armstrong:

So you would be in support of working with the sponsor and working groups moving forward?

Chris Ferrari:

Yes.

Chairman Armstrong:

Are there any other questions? Seeing none, is there anybody else who would like to speak in opposition to A.B. 392? Seeing no one, we will go to those neutral. Would anyone like to speak neutral on A.B. 392?

Tom Clark, representing Burning Man Project:

I am sure you have heard of Burning Man. It is a small festival, with about 68,000 people who gather in the northern Nevada desert. We have 33 countries represented. It is a very unique activity and a very unique event. The ticket prices are actually kind of high, but that is so the organization can pay for the Bureau of Land Management (BLM) fees, law enforcement, hospitals, first aid, and the first responders. I think there are nine different law enforcement agencies that go up there.

We are here today neutral on A.B. 392 because in the last couple of years, and it had nothing to do with legislation, the Burning Man Project became a 501(c)(3). I want to make sure it is on the record they did not do that because of legislation. They did it because the Burning Man Project is a legacy program, so the organization can ensure that for years to come, a new board of directors can come in and the activity and the organization can continue.

I have been working with Assemblywoman Kirkpatrick, and with working groups, and there have been a lot of conversations. It is important to note that there is no commerce at Burning Man. You cannot buy a cola. You cannot buy a beer. You cannot buy a sandwich. The only thing that you can buy is coffee and ice, because the organization feels that those two elements are essential to survival. Everything else is gifted. You pay your ticket price, basically what I consider like a flat tax. You come into the organization and you rely only on your neighbors for your essentials—everything from being gifted a sandwich, a beer, an ice tea, or whatever it may happen to be.

The performers at Burning Man are not paid for by the organization. They are all volunteers. Whitney Myer, who was on *The Voice* and did really well and has a great career, performs in my camp every year for free. There is no stipend paid by the organization. There is none of that.

I make these comments to support Assemblywoman Kirkpatrick's bill, because there are different things you have to look at when you are looking at this type of policy, and we look forward to continuing to work with her on that. We would love to have you all out at Burning Man.

Assemblywoman Diaz:

What is the average cost of a ticket to Burning Man? What is the cost per person for providing the land and all of the services you mentioned? I want to have a picture as to how much money is coming in, and how much money you actually have to expend per person.

Tom Clark:

The tickets range in price depending on the tier you are in. The first tier of tickets go out at about \$650. The next tier of tickets, which is the largest tier, go out at \$390. We have a tier of tickets for individuals on a lower income. They can submit an application, and these tickets are subsidized by the organization.

I do not have the data with me right now, as far as what comes in and goes out, and what the cost of those fees are. What I can tell you, on the record, and I will be more than happy to substantiate this, it does not make a profit. It is a nonprofit organization, and that is not just based on the BLM fees, and the cost of hundreds and hundreds of Sani-Huts, and all the things they have to do to build the city.

I can tell you they also support a number of other different nonprofits, such as Burners without Borders, Black Rock Solar, and the Black Rock Arts Foundation, and are embarking on a very ambitious program called Big Art for Small Towns. They want to take the art that is built at Burning Man and plant it all around Nevada, so that other Nevadans can see the art from the playa. This will create kind of a tourism destination, so that people from the Bay Area, or wherever, can come into the northern Nevada area, and even southern Nevada now, tour around, and take a look at that different kind of art.

I can provide you with the specific financials on the amount of money that comes in, the amount of money that goes out, and where it goes because that has always been transparent. When people pick up their calculator and figure \$390 times 48,000 people, that is a lot of money. It is a lot of money, but for us to have the activity on BLM land is extraordinarily expensive.

Assemblyman Nelson:

What did you put in your application to the Internal Revenue Service (IRS) as justification for the 501(c)(3) designation?

Tom Clark:

I will have to get that documentation for you. I will tell you that it was a three- or four-year long process to be able to prove to the IRS that it was a nonprofit organization, and that is why I mean to say becoming a nonprofit had nothing to do with legislation. It had to do with the legacy of the event, as it goes forward, but I can provide you with all of the documentation that went into creating that effort.

Assemblyman Nelson:

Do you have continuing payroll through the whole year, or is it just leading up to the festival and through the festival?

Tom Clark:

Yes. There is a large contingent of people who are employed by the organization. They live up in Gerlach, where the activity actually takes place, on the playa. They have their headquarters in San Francisco, and employ a number of people. They call it the "DPW"—the Department of Public Works. They build the city. It takes them the full year to build the city and organize it.

I might encourage you after this Committee hearing, if you go out the north door and hang a right, there is a picture of Burning Man hanging on that wall. You can see the magnitude of what it is to build the fourth largest city in Nevada, which is only going to really be there for a week, for the participants.

It is also the largest clean activity. We make sure that every single piece of debris is taken off the playa every year. There is a map on their website where you can actually see a map showing all of the theme camps that did not pick up what they were supposed to, and they get graded based on that.

I would be more than willing to meet with you and bring that information forward.

Chairman Armstrong:

Make sure you submit that to our secretary and we will put it on the record.

Are there any other questions? Seeing none, would anyone else like to speak neutral on A.B. 392? [There was no one.] Do you have any final thoughts, Assemblywoman Kirkpatrick?

Assemblywoman Kirkpatrick:

As you can see, there has been long-term discussion of this. I look forward to hearing from Committee members on some of the exemptions that people are

asking for, because one thing Ms. Vilardo taught me years ago is if you are going to do it for one, you should do it for all, because then it is a policy decision and not a political decision.

I have been pretty honest with the folks behind me, because if you are not going to pay the LET, then you are going to pay something else, because you cannot have a free ride anymore if we are to improve in our state. This is a policy decision. This is about cleaning up the language. This is about being able to enforce things. This is about getting rid of the exemptions. All of those are good basic tax policy, and for the long term it will help us do better by enforcing it, collecting it, and having that bright line.

I appreciate you allowing me to have both hearings tonight. I would hope and ask that we have just a little more time to work on it, so that we can get it extremely right. What I would say to the folks who are listening on the Internet or in the back is that this is not something that I want to do on May 15, so if I am fortunate enough to keep moving it forward, I would like to have it done by May 2, no ifs, ands, or buts about it, and let the body determine from that point where it goes, because we cannot keep waiting until the last minute and running out the clock.

Chairman Armstrong:

Thank you, Assemblywoman Kirkpatrick. I think we have heard, based on the testimony that even those who have testified in opposition are still looking forward to working on this bill, to make sure that it turns out to be fair. With that, we will close the hearing on A.B. 392.

[A letter from the Burning Man Project ([Exhibit V](#)) was presented but not discussed, and is included as an exhibit for the meeting.]

Based on the testimony and what I have heard, since we suspended Rule No. 57, subsection 4, of the Assembly Standing Rules tonight, I would like to work session both Assembly Bill 392 and Assembly Bill 393, and get them referred to the Assembly Committee on Ways and Means to give us more time to establish those working groups, and get this done before May 2.

At this point I will open the work session. We will start with A.B. 392.

Michael Nakamoto, Deputy Fiscal Analyst:

Before we start the work session, in case there was any confusion, I just want to clarify that the motion that was made to suspend Rule 57.4 of the Assembly Standing Rules earlier this evening did pertain to all the bills on the agenda and not specifically to any bill.

That having been said, the first bill on the next part of the work session is Assembly Bill 392, which was sponsored by Assemblywoman Kirkpatrick, and was just heard in this Committee a few minutes ago.

This bill creates what is referred to in the digest as the Luxury Discretionary Spending tax, on admission and amusement services, for facilities where the maximum occupancy is less than 7,500. The rate of this tax would be 8 percent of the admission and amusement price, as well as 8 percent of the food and beverage at that admission and amusement facility. Above the 7,500, it is 8 percent on the admission price only. The bill also splits out the current provisions of the Live Entertainment Tax (LET), to apply specifically only to licensed gaming establishments, creating a separate chapter within Title 41 of *Nevada Revised Statutes*, to deal specifically with the administration of those provisions by the State Gaming Control Board. There are various exemptions placed in the bill that I am not going to go through.

The only thing I will mention are the amendments that were proposed. There is the amendment to clarify the NASCAR exemption by Mr. Goldwater ([Exhibit S](#)), as well as the exemption for shopping malls that was brought forth by Mr. Gordon on behalf of Broadacres ([Exhibit U](#)). I would be happy to answer any questions.

Chairman Armstrong:

My intent is to move this out of Committee and get it to the Assembly Committee on Ways and Means. At this point, I will entertain a motion for no recommendation, without amendments, and to rerefer to the Assembly Committee on Ways and Means.

ASSEMBLYWOMAN DICKMAN MADE THE MOTION TO REREFER
ASSEMBLY BILL 392 TO THE ASSEMBLY COMMITTEE ON WAYS
AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE
MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
WAS ABSENT FOR THE VOTE.)

I will close the work session on A.B. 392 and open the work session on Assembly Bill 393.

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 393 is Assemblywoman Kirkpatrick's other bill relating to the Live Entertainment Tax (LET) that was just heard in this Committee. This bill, similar to A.B. 392, splits off the provisions of the LET into two different chapters, one to be administered by the State Gaming Control Board and the other to be administered by the Department of Taxation. In both instances, the rate of the tax is revised for facilities where the maximum occupancy is below 7,500. The rate is 8 percent of the admission price, plus food and beverages, and other refreshments. You will note that merchandise, which is currently part of the tax, is removed from that. For facilities where the maximum occupancy is above 7,500, the tax is at 8 percent of the admission price only.

Without going too much further into the details of the bill, that is the brief overview of it. I would be happy to answer any questions.

Chairman Armstrong:

My intent is the same for this bill as Assembly Bill 393. At this point, I will entertain a motion for no recommendation and to rerefer to the Assembly Committee on Ways and Means.

ASSEMBLYWOMAN DIAZ MADE THE MOTION TO REREFER
ASSEMBLY BILL 393 TO THE ASSEMBLY COMMITTEE ON WAYS
AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE
MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
WAS ABSENT FOR THE VOTE).

I will close the work session on A.B. 393. I will open it up for public comment. Would anyone like to speak for public comment? Seeing no one, I will close public comment. I want to thank the Committee. We heard three bills, and heard nine in work session. That will save us some time throughout the week. I appreciate those who were here and spent the evening with us. I will remind the Committee that we will meet on Thursday. We have two bills to hear and we will work session at least four. We are adjourned [at 8:18 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblyman Derek Armstrong, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Taxation</u>			
Date: <u>April 7, 2015</u>		Time of Meeting: <u>12:37 p.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 464	C	Assemblyman Armstrong	PowerPoint Presentation
A.B. 464	D	Assemblyman Armstrong	<i>Las Vegas Review-Journal</i> article.
A.B. 464	E	Assemblyman Armstrong	Testimony, Guinn Center for Policy Priorities
A.B. 464	F	Assemblyman Armstrong	Tax Tables
A.B. 464	G	Assemblyman Armstrong	Fiscal Note from Department of Taxation
A.B. 464	H	Phyllis Gurgevich, Nevada Bankers Association	Letter of support
A.B. 464	I	Terry Graves, Scrap Metal Processing Group and Nevada Cogeneration Associates	Prepared testimony
A.B. 464	J	Pete Ernaut, Nevada Resort Association	Resort Industry Analysis
A.B. 464	K	Assemblyman Armstrong	"Nevada's 2015 Proposal for Business License Fees"
	L	Michael Nakamoto, Fiscal Analysis Division	Work Session Packet
A.B. 32	M	Michael Nakamoto, Fiscal Analysis Division	Work Session Document
A.B. 32	N	Michael Nakamoto, Fiscal Analysis Division	Fiscal Note from DMV
A.B. 161	O	Michael Nakamoto, Fiscal Analysis Division	Work Session Document
A.B. 316	P	Michael Nakamoto, Fiscal Analysis Division	Work Session Document
A.B. 366	Q	Michael Nakamoto, Fiscal Analysis Division	Work Session Document
A.B. 391	R	Michael Nakamoto, Fiscal Analysis Division	Work Session Document

A.B. 392	S	David Goldwater, Las Vegas Motor Speedway Fan Advisory	Proposed Amendment
A.B. 392	T	David Goldwater, Las Vegas Motor Speedway Fan Advisory	Aerial View of the Las Vegas Motor Speedway
A.B. 392	U	Garrett Gordon, Broadacres Open Air Marketplace, LLC	Proposed Amendment and Letter from the Department of Taxation
A.B. 392	V	Tom Clark, Burning Man Project	Letter