

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Seventy-Eighth Session
May 8, 2015**

The Senate Committee on Revenue and Economic Development was called to order by Chair Michael Roberson at 3:56 p.m. on Friday, May 8, 2015, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Roberson, Chair
Senator Greg Brower, Vice Chair
Senator Joe P. Hardy
Senator Ben Kieckhefer
Senator Ruben J. Kihuen
Senator Aaron D. Ford
Senator Pat Spearman

GUEST LEGISLATORS PRESENT:

Assemblyman Stephen H. Silberkraus, Assembly District No. 29

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Gayle Rankin, Committee Secretary

OTHERS PRESENT:

Robert Herr, P.E., Assistant Director of Public Works, City of Henderson
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Hillary A. Bunker, Senior Deputy Attorney General, Tobacco Enforcement Unit,
Office of the Attorney General
Michael Hackett, Nevada Tobacco Prevention Coalition

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Dawn Lietz, Deputy Administrator, Motor Carrier Division, Department of Motor Vehicles
Ryan Kenny, Clean Energy
Paul Enos, CEO, Nevada Trucking Association
Alex Tanchek, Nevada Propane Dealers Association

Chair Roberson:

I will open the work session on Assembly Bill (A.B.) 380.

ASSEMBLY BILL 380 (1st Reprint): Revises provisions relating to sales and use taxes. (BDR 32-964)

Joe Reel (Deputy Fiscal Analyst):

Identical to Senate Bill (S.B.) 382, A.B. 380 was heard by this Committee on April 2. The amendments adopted to S.B. 382 and A.B. 380 are identical. The bill passed out of the Senate on April 21 unanimously.

SENATOR FORD MOVED TO DO PASS A.B. 380.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Roberson:

We will hear A.B. 366.

ASSEMBLY BILL 366 (1st Reprint): Revises provisions relating to the use of certain motor vehicle fuel taxes. (BDR 32-927)

Assemblyman Stephen H. Silberkraus (Assembly District No. 29):

Under statute, revenue provided to Nevada cities and counties for roadwork projects from these gas taxes have various restrictions. One allows for repairing existing streets while another allows funds to be spent for signage, traffic control and sidewalks. Assembly Bill 366 does not change how the gas tax is distributed. This bill allows for the expansion of cities and counties to use these funds for their road projects.

A city or county may have enough funds from gas taxes for a specific roadwork project; however, they may not have enough funds in the right fund, which may delay or stop a project.

As an extreme example, I will explain how these restrictions can affect a roadwork project. The City of Henderson is resurfacing an existing paved street using Fund 2002. During the repair, it comes across unforeseen repair work on the sidewalk due to a drainage problem and some labor charges for design work are required. Fund 2002 allows funds to be used on design work, but the monies can be spent only on existing road repair. While Henderson might have enough money in Fund 1001, which allows funds to be spent on sidewalk repair, those funds may not be used for labor charges for the design work. If the city does not have enough money in Fund 2003, which allows for a labor charge for design and repairs to sidewalks and drainage, then the city would have to stop or delay the project until enough money is in the fund.

To the average citizen, it may look like orange cones have been set up and no one is working on the job that needs repair. In fact, the city or county could be working with their own accounting department to see if there is enough money in the proper fund to continue work on the project due to restrictions set by the Legislature. This scenario is an extreme example of the confusion, unnecessary work and expense the cities and counties must deal with when it comes to road repair projects. Most of the time, it delays the beginning of a project or pushes the design process of a roadway. These choices are a needless burden in the repair of roadwork in our community. I am proud to have worked with the City of Henderson, other counties and municipalities on this issue. The goal and intent of A.B. 366 is to provide the flexibility for cities and counties to utilize these funds for the construction, maintenance or repair of public roadways while reducing costs and allowing a more timely completion of needed improvements to serve the public as intended.

Robert Herr, P.E. (Assistant Director of Public Works, City of Henderson):

I would like to thank Assemblyman Silberkraus for sponsoring A.B. 366, which provides roadway funding flexibility to Nevada cities and counties. *Nevada Revised Statute* (NRS) 365 provides revenue to Nevada cities and counties for roadwork projects and the right-of-way from certain existing gas taxes with restrictions on what may be constructed or repaired, and what portion of the design and construction process is eligible for funding. Based on the funding source restrictions, we may have to issue secondary contracts and

incur separate direct and administrative costs. This could inconvenience the public with multiple mobilizations and time extensions to projects in the right-of-way. This bill brings uniformity to the restrictions and makes definitions for the distribution and use of the proceeds common across the specific gas tax funds. The definitions for construction, maintenance and repair and for right-of-way are included in sections 3 and 4 of the bill, and the remainder of the bill makes conforming changes throughout the section.

We are not changing the funding formulas. The cities and counties will not get any additional funds beyond entitlements granted by the formulas today. The bill adds a definition for pathways within the right-of-way to address situations where an off-street path is desired and would be constructed in lieu of the standard 5-foot concrete sidewalk. The bill does not add additional facilities over those eligible for funding but makes the facilities eligible for funding with any of the funds. The bill brings much-needed clarity to the issue of allowable administrative costs and clarifies that administrative costs necessary for directly incurred or directly incidental projects are allowable costs under these funds for local government. This is consistent with testimony provided when the taxes are enacted or significantly modified. It is important to allow design, inspection and other project-specific administrative costs to be appropriately paid by these funds. The bill references sections of NRS 365 pertaining to taxes on fuel, watercraft and fuel for jet- or turbine-powered aircraft. We have been informed by the Legislative Counsel Bureau that these sections must be included for "definitional clumping," but this bill does not alter the calculation and use of funds designated for watercraft and aircraft projects under those two sections. We have worked with several other Nevada municipalities on this legislation and believe by having common definitions for the use of the gas tax funds, cities and counties will have needed flexibility to complete projects with potentially lower costs and less inconvenience to the public.

Chair Roberson:

I will close the hearing on A.B. 366. I will open the hearing on A.B. 83.

ASSEMBLY BILL 83 (1st Reprint): Revises provisions relating to tobacco.
(BDR 32-175)

Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):

Assembly Bill 83 revises NRS 370 that regulates the manufacturing and sale of tobacco products in our State. In 1998, Nevada entered into the tobacco Master Settlement Agreement (MSA).

Hillary A. Bunker (Senior Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General):

I will present an overview and introduction to the MSA ([Exhibit C](#)).

Several states sued the major tobacco companies in the 1990s to recover Medicaid costs and other damages related to tobacco health care costs, page 2, [Exhibit C](#). In 1998, 46 states, the District of Columbia and five territories agreed with the tobacco companies and signed a settlement agreement. Four states—Florida, Texas, Minnesota and Mississippi—did not sign and settled separately. The key provision of the MSA is that there is no end date.

There are four parts to the terms of the MSA. The first places restrictions on tobacco companies focusing on youth smoking. Those companies are prohibited from targeting youth using cartoons, and limitations are placed on brand-name sponsorship of events popular with youth. Overall advertising and sponsorship limitations affected outdoor advertising, billboards, brand-name sponsorship, tobacco brand-named merchandise, free samples of cigarettes and misrepresentations of the health consequences of smoking. States that signed the MSA agreed to release the tobacco manufacturers from specific claims they may have had at that time or in the future from costs arising out of tobacco-related illnesses. Individuals are still permitted to sue any of the tobacco companies in any state. In return for the liability release, the tobacco companies agreed to make yearly payments to the signatory states.

Parties to the MSA—the original participating manufacturers—included Philip Morris, R.J. Reynolds, Lorillard, and Brown & Williamson. Since the 1998 signing, more than 40 other manufacturers have signed the MSA.

Nevada receives 0.6 percent of the MSA payment each year or approximately \$40 million. The payment is received on April 15 and split statutorily. The Governor Guinn Millennium Scholarship receives 40 percent and 60 percent goes to the Fund for a Healthy Nevada. Other costs associated with the enforcement of the MSA are also taken out of the annual payment.

Forty companies and four original companies signed the MSA. We call those companies that are not parties to the MSA nonparticipating manufacturers (NPM). They do not make annual payments to the State through the MSA, but their activity is regulated by statute and they are required to track their cigarette sales and make escrow deposits every quarter. These escrow deposits stay in their bank accounts for return to the tobacco companies 25 years after payment unless our State obtains a judgment against them, in which case the money can be released to us.

Recent arbitration between states and the tobacco companies reinforced that we must diligently enforce the terms of the MSA at all times. Although diligent enforcement was not defined during the proceedings, some MSA-covered factors and others under consideration are working with the Department of Taxation on tobacco-related issues, having reliable accounting figures, allocating resources to enforcement, enacting legislation and working with the National Association of Attorneys General.

The Tobacco Enforcement Unit of the Attorney General's Office is responsible for enforcing the MSA to make sure all tobacco companies active in Nevada follow State and federal laws. We also supervise the Youth Compliance program [Exhibit C](#) for Nevada where undercover stings are performed on retailers to see if tobacco sales are made to underage youth. We regularly work with the Department of Taxation on tobacco-related issues to ensure accurate reporting of numbers, and we perform background checks for businesses wishing to operate in Nevada.

As I mentioned earlier, the MSA payments go to the Fund for a Healthy Nevada and The Governor Guinn Millennium Scholarship Program. Receipt of future tobacco payments is vital to the continued existence of these programs. The cornerstone of NRS 370A is the requirement that cigarette manufacturers either sign on to the MSA and make the annual payments or if the manufacture does not sign the MSA, they are required to deposit the funds into their own escrow account. The escrow funds are intended to provide a source of recovery if Nevada prevails in a future health-related lawsuit. If Nevada is found to not have diligently enforced any of the escrow provisions or provisions of the MSA, our annual \$40 million MSA payment is put at risk.

Sections 2, 5, 7 and 9 of [A.B. 83](#) expand the statutory definition of manufacturer to provide for the licensing and regulation of persons

manufacturing cigarettes using commercial-grade, cigarette-rolling machines commonly known as roll your own (RYO). These are commercial-grade machines where paper and loose tobacco are inserted into the machine, and the output is one pack of cigarettes per minute. Rolled cigarettes that come out of the machine avoid the federal excise tax placed on cigarettes. The State excise tax placed on cigarettes is owed by manufacturers under the MSA. Since 2012, under federal law, a person who makes a commercial RYO machine available has to obtain a manufacturing permit from the Alcohol and Tobacco Tax and Trade Bureau. Nevada law does not mirror this federal law, and Nevada law enforcement officers do not have a mechanism in place to bring the operators in compliance with Nevada law. We know of still active commercial RYO machines operating in Nevada. Some operate at social clubs where membership dues must be paid prior to being permitted, but the majority are standard retail stores.

This bill creates an additional definition of manufacturer to include persons who own, maintain, operate or permit others to operate a commercial-grade RYO machine. These amendments will allow Nevada investigators to inspect establishments operating RYO machines and seize equipment if it does not comply with State law. A licensee requirement is only applied to commercial-grade machines, not to smaller machines used at private residences for personal consumption.

Sections 3 and 10 of A.B. 83 create an exception to the business license requirement for tobacco companies that are required by law to maintain a registered agent in the State, but otherwise have no contacts. Tobacco manufacturers are required under State law in NRS 370.680 to either register as a foreign corporation or other business entity or appoint a registered agent in this State.

Under NRS 76.100, subsection 6, a person is deemed to be conducting business in Nevada if they have a registered agent; therefore, he or she needs a Nevada business license. This statute would compel tobacco manufacturers to obtain Nevada business licenses because they have registered agents, although they have no contact with the State to include physical buildings or employees. The proposed change to NRS 76.100, subsection 6 is directed at tobacco manufacturers that have a registered agent in the State—as required to do so under NRS 370.680—but do not otherwise have any contact with Nevada. These manufacturers work with distributors or importers to ship their product to Nevada, and it is the distributors and importers that require a business license.

Some of the tobacco manufacturers hold a business license because they act as an importer or distributor in Nevada. This exception does not change the requirement of holding a business license. The exception is aimed at those tobacco manufacturers that if not for NRS 370.680 would not have a registered agent in Nevada.

Michael Hackett (Nevada Tobacco Prevention Coalition):

We testified in support of this bill in the Assembly, and we want to testify in support in this Committee. This bill will improve price and fairness, and provide tax parity among tobacco products and for tobacco manufacturers.

Chair Roberson:

I will close the hearing on A.B. 83. I will open the hearing on A.B. 32.

ASSEMBLY BILL 32 (1st Reprint): Revises provisions relating to special fuels.
(BDR 32-382)

Dawn Lietz (Deputy Administrator, Motor Carrier Division, Department of Motor Vehicles):

Please refer to prepared testimony ([Exhibit D](#)) and my visual aid ([Exhibit E](#)) to help understand the changes in A.B. 32.

Ryan Kenny (Clean Energy):

Please refer to testimony in my letter ([Exhibit F](#)). We are the Nation's largest provider of natural gas transportation fuel. We have 550 stations in 43 states, including 22 in Nevada. We support A.B. 32.

Paul Enos (CEO, Nevada Trucking Association):

We support A.B. 32. Many of our companies use alternative fuels for different applications. Some of my largest carriers use close to 50 different types of fuels, and they consider their fleet a rolling laboratory. We appreciate putting this consistency into law and fixing the inequities due to not being able to use the conversion rate, especially for liquefied natural gas (LNG) where we have paid 19.3 cents more prior to using the conversion. We also appreciate the additional \$.044 cents on compressed natural gas (CNG) remittance to the Department of Motor Vehicles that results in \$127,000 more to the State Highway Fund. As these alternative fuels are approved by the larger companies, they will use different applications. It is good to get ahead of this.

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Alex Tanchek (Nevada Propane Dealers Association):

The Propane Dealers Association would like to be on record in support of A.B. 32.

Ms. Lietz:

The International Fuel Tax Agreement issued a ballot last month asking the membership to adopt the 6.06-pound standard unit measure for LNG reporting. This is consistent with what the other states do and with what is happening in the trucking industry as a whole. This bill also allows LNG suppliers to be equivalent to the propane in the CNG dealers in that they do not have to remit tax to the state unless it is placed in a motor vehicle.

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Chair Roberson:

I will close the hearing on A.B. 32. This meeting is adjourned at 4:31 p.m.

RESPECTFULLY SUBMITTED:

Gayle Rankin
Committee Secretary

APPROVED BY:

Senator Michael Roberson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 83	C	9	Hillary Bunker / Office of the Attorney General	Introduction to the Master Settlement Agreement
A.B. 32	D	4	Dawn Lietz / Department of Motor Vehicles	Prepared Testimony
A.B. 32	E	3	Dawn Lietz / Department of Motor Vehicles	Visual Aid
A.B. 32	F	2	Ryan Kenny / Clean Energy	Letter