MINUTES OF THE SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT

Seventy-Eighth Session
March 24, 2015

The Senate Committee on Revenue and Economic Development was called to order by Chair Michael Roberson at 3:48 p.m. on Tuesday, March 24, 2015, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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:

Senator Moises Denis, Senatorial District No. 2
Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Jennifer Pearce, Committee Secretary

OTHERS PRESENT:

Jeremy Aguero, Principal Analyst, Applied Analysis
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Harry Hinderliter, Nevada Bankers Association
Phyllis Gurgevich, Nevada Bankers Association
Stan Wilmoth, President, CEO, Heritage Bank; Nevada Bankers Association

Samuel P. McMullen, Nevada Bankers Association
Carole Vilardo, President, Nevada Taxpayers Association
David Goldwater
Nancy Brune, Executive Director, Kenny C. Guinn Center for Policy Priorities
Knight Allen
Paul J. Enos, CEO, Nevada Trucking Association
Bryan Wachter, Retail Association of Nevada
Wayne Frediani, Nevada Franchised Auto Dealers Association
Ray Bacon, Nevada Manufacturers Association
Terry Graves, Scrap Metal Processing Group; Nevada Cogeneration Association

Chair Roberson:
We are here to consider Senate Bill (S.B.) 378.

SENATE BILL 378: Makes various changes concerning governmental financial administration. (BDR 32-150)

Senator Pat Spearman (Senatorial District No. 1):
Less than half a penny—that is what we will be discussing in this presentation (Exhibit C). I spent the last 2 years listening to industry representatives and stakeholders, studying what other states have done and reviewing past revenue studies. I present S.B. 378 for your consideration.

I will begin with this quote on Slide 3: "We have a moral imperative to create a revenue structure equal to our obligatory responsibility for the welfare of all Nevadans." This legislative body can work together in a nonpartisan manner to consider bold strategies and innovative economic initiatives and develop a funding structure for near-term goals and long-term responsibilities.

As shown in Slide 5, I quote Governor Brian Sandoval: "We are united in our desire to move Nevada forward with a transformed education system, a healthy citizenry, safe and reliable communities and a vibrant economy."

Outlined in Slide 7, our constituents, industry representatives and leading political leaders agree that we must create a stable and sustainable revenue structure to move forward. This structure will help fund important ongoing items such as education, economic development and transportation. To be successful the revenue structure must be simple to administer, simple to calculate and simple to collect.

Specifically, my revenue plan allows the July 1 sunset on the prepayment on the Net Proceeds of Minerals Tax (NPOMT), approved by the 77th Session to remain intact, versus the Governor's proposal to extend the sunset by 1 year. It is important to allow the sunset to occur as soon as possible so the NPOMT can return to being based on the actual preceding calendar year's business operation versus the estimated and true-up basis. Given the impact this revenue source had on the current biennium because of the prepayment tax structure, it is imperative that we eliminate this payment structure quickly to provide certainty and stability for State and local governments and our taxpayers.

It also permanently eliminates industrial and health insurance expenses as allowable deductions from gross proceeds to determine the NPOMT. These expenses, as a deduction, were disallowed by the 75th Session for fiscal year (FY) 2010 and FY 2011 and were originally proposed to be given back to the mining industry in FY 2012.

However, we extended the sunset on the disallowance of these deductions in the 76th and 77th Sessions. I propose to permanently eliminate health and industrial insurance deductions as allowable expenses. My plan eliminates the Modified Business Tax (MBT) on general businesses in *Nevada Revised Statutes* (NRS) 363B, commonly referred to as MBT on nonfinancial institutions.

Mining businesses that are required to pay taxes under the NPOMT in NRS 362 will be required to pay the same 2 percent tax on all quarterly taxable wages identical to what is required of financial institutions under NRS 363A.

This MBT on mining is identical to the proposal recommended by the Governor in his Executive Budget. Businesses will be required to continue to pay the annual $200 Business License Fee (BLF). However, those businesses that file an initial or annual list with the Secretary of State, under Title 7, and do not intend to perform a service or engage in business in Nevada must pay an annual BLF of $400.

This plan also establishes a supplemental revenue fee that requires businesses to pay a flat quarterly fee of $50, plus those businesses with gross revenue greater than $25,000 per quarter will pay 0.465 percent. That is less than half a penny tax on each dollar of gross revenue above the $25,000 exemption threshold. The structure of this fee, based on gross revenue, is identical to the structure in S.B. 252 defining gross revenue and Nevada gross revenue with respect to the treatment of pass-through revenue and exclusions from gross revenue.

SENATE BILL 252: Revises provisions governing the state business license fee. (BDR 32-1185)

The Legislative Counsel Bureau fiscal analysis division prepared a handout (Exhibit D) that contains examples of the amount of tax that would be due under alternative quarterly gross revenue amounts. The table displays the amount that would be due quarterly as well as the annual amount due. The amounts are computed based on the $50 quarterly fee paid by all businesses and the additional tax per quarter based on the amount of gross revenues that exceed $25,000 per quarter taxed at 0.465 percent. These amounts do not include the annual $200 Business License Fee that would continue to be paid to the Secretary of State under statute.

Here are some specific scenarios. In Slide 11 of Exhibit C, a business with $25,000 in quarterly gross revenue would pay zero per quarter because the business has no quarterly gross revenue that exceeds $25,000.

In Slide 12, a business with $62,500 gross revenue per quarter would pay $224 per quarter in taxes. This calculation is based on the $37,500 over the $25,000 exemption. A business with $125,000 gross revenue per quarter would pay $515 per quarter. A business with $250,000 in gross revenue per quarter would pay $1,096 per quarter. A business with $1.25 million per quarter would pay $5,746 per quarter.

My proposal is designed to generate enough revenue over the 2015–2017 biennium to cover the amount included in the Governor's budget for the slot route operator proposal; the BLF proposal in S.B. 252; the elimination of the MBT on nonfinancial businesses; and the change in the timing of the sunset on the NPOMT.

In Slide 17, the fiscal analysis division staff estimated the revenue that will be generated based on my plan. The quarterly supplemental revenue fee that requires each business to pay $50 per quarter and the rate of 0.465 percent on quarterly gross revenue that exceeds $25,000 is estimated to generate $639.8 million in FY 2016 and $665.7 million in FY 2017. The MBT on the mining business at 2 percent of total quarterly taxable wages is estimated to generate $19.1 million in FY 2016 and $20 million in FY 2017. The quarterly supplemental revenue fee, the change in the NPOMT sunset date and the MBT on mining combined are estimated to generate $658.9 million in FY 2016 and $724.9 million in FY 2017.

Senator David R. Parks (Senatorial District No. 7):
We have seen several tax proposals in the Legislature over the years. I have been involved in most of them going back to 1981 when we did the tax shift from property taxes to sales taxes. We then experienced the recession and the sales tax revenue did not generate the revenue that we passed up by lowering the property tax cap from $5 assessed valuation down to $3.64.

Although we have entertained many tax proposals, we have not settled on a permanent revenue structure. Ms. Vilardo will confirm that we have a system whereby for every 1 percent increase in our economy our revenue structure generates only 0.7 percent, leaving a shortage. In 2003, we considered a gross receipts tax proposed by Governor Kenny Guinn that looked similar but was not the same structure in S.B. 378. The final tax package that passed that year did not look like what Governor Guinn initially proposed and it created the structure we have in place. This includes the MBT on payroll that S.B. 378 proposes to remove. In 2009, in the midst of the Great Recession, the Legislature increased taxes, including the MBT, the sales and use tax, and the transient lodging tax. These are the taxes known as the sunset taxes that we are considering to make either part of a permanent reform or to delete.

In 2011 and 2013, we extended the sunset taxes but did not provide any substantial new source of revenue or construct a new revenue structure. That is why in 2015, 12 years later, we have to discuss this largely within the parameters of the tax structure that we created in 2003. In the context of business tax, gross receipts tend to be a more stable source of revenue than traditional corporate income taxes.

The design of this proposed tax in S.B. 378 is a straightforward gross receipts tax that is easily understood, without creating many individual categories. It is flexible to modify while it is still in the Senate and when we reconcile with the Assembly. It is also easy for future legislators to make any needed changes to the structure. The pass-through and exemptions in the bill should limit tax pyramiding. Senate Bill 378 could be modified to address this issue further if necessary as our Legislative process moves forward.

Chair Roberson:
Why do you believe S.B. 378 addresses the issue of pyramiding?

Senator Parks:
Senate Bill 378 and the Governor's S.B. 252 allow for the discount part of a business's revenue would be passed off against someone else. For example, if a contractor had a $10 million business and a subcontractor cost $5 million, the contractor would pay on $5 million and the subcontractor would pay tax on $5 million.

Chair Roberson:
Are you referring to the pass-through revenue language that is also in S.B. 252? Do S.B. 252 and S.B. 378 have identical language as far as those provisions go?

Senator Parks:
Yes, in section 11 on page 5 of S.B. 378.

Finally, compliance with S.B. 378 is easy for those required to file. It should allow for minimal tax avoidance and minimal cost to the State and to businesses filing these tax returns. Passing a tax plan that everyone can agree upon is no small task. I support S.B. 378.

Senator Moises Denis (Senatorial District No. 2):
I have served on the Senate Committee on Finance and the Senate Committee on Education. I have studied tax policy and how it applies to Nevada. Senate Bill 378 is simple, broad-based and fair. What ensures that the revenue from S.B. 378 will go toward education? The Governor is committed to this endeavor, and it seems the general consensus in the caucus is to fund education at adequate levels. We decide the future of our great State.

Senator Spearman:
Sections 3 through 12 provide various definitions as used in the new chapter of the NRS created pursuant to this bill. Sections 14 through 19 provide for the administration of the supplemental revenue fee by the Department of Taxation. Sections 20 and 22 provide for the calculation of gross receipts and the rules for gross receipts to be sitused to Nevada. Specifically, under section 17, a business entity whose taxable gross receipts for that calendar quarter exceed $25,000 must remit with a return fee an amount equal to $50 plus

0.465 percent of the portion of its taxable gross revenues for that calendar quarter exceeding $25,000.

In accordance with section 12, the taxable gross receipts of any business entity are determined by taking the amount of its gross receipts, making certain deductions from that amount under section 20, then satisfying all or part of that adjusted amount pursuant to section 21.

Sections 23 through 24 establish provisions that are substantially similar to provisions under statute within NRS 360 to provide the administration of the revenue fee by the Department of Taxation in a manner that is similar to the administration of other taxes by the Department.

Section 35 through 44 amend various provisions of NRS 360, which requires the Department of Taxation to reflect the repeal of the MBT pursuant to section 80 of this bill and the enactment of the supplemental revenue fee administered by the Department pursuant to sections 2 through 34.

Section 45 requires businesses subject to the NPOMT to pay the MBT rate of 2 percent imposed on financial institutions. Sections 46 through 50 amend various provisions of Title 7 of NRS to provide for a $400 Business License Fee for businesses that do not intend to perform a service or engage in a trade for profit in this State.

Sections 51 through 74 amend various provisions to provide clarifying and conforming language pursuant to sections 2 through 34 inclusive, and sections 76 and 80 make the $200 annual fee for State Business License Fees permanent.

Senate Bill 378 is the right start as we move forward to meet our goals. We will improve our education system, help businesses of all sizes to thrive and expand, and build a strong economy in Nevada.

Senator Kieckhefer:
With regard to the continuation of the MBT for financial institutions—if you want to eliminate the MBT because you do not think it is a good tax structure, financial institutions will be required to pay the gross receipts tax under the bill, so why continue a secondary tax on that institution as well?

Senator Spearman:
In order to bring the rate down, it just made sense to tax those businesses. In Article 10 of the Nevada Constitution, there are only certain things we can do with mining. We attempted to come up with a broad-based plan that is simple.

Senator Kieckhefer:
We tried to do something with the Constitution and mining, and that did not go so well. Banks do not have the same issue but would be required to pay twice on this gross receipts tax. I am curious why.

Senator Spearman:
This is a start. If this does not work for banks, let us come up with an alternative.

Senator Brower:
This bill seems to be a true gross receipts tax in that it does not account for differing margins experienced by different types of businesses, as the Governor's plan does. This seems problematic when we talk about a gross tax. Can it be unfair from industry to industry in terms of who is paying the percentage of the tax load?

Senator Spearman:
I will answer a portion of the question. There are similarities between S.B. 252 and S.B. 378. This is not a true gross receipts tax. By making the base broader and applying that rate to everyone, it becomes more inclusive. I would like Jeremy Aguero to answer why this is not a true gross receipts tax.

Chair Roberson:
I will allow Mr. Aguero to address this issue. However, as to the rest of the bill, I would like to continue with Senator Spearman.

Jeremy Aguero (Principal Analyst, Applied Analysis):
The response to your question is similar to the discussions we have had. When the gross receipts tax was brought forward from the Governor's Tax Force on Tax Policy in 2003, that was a true gross receipts tax. Every business where gross receipts were generated in the State counted as a gross receipt upon which the tax would be imposed.

Senate Bill 378 borrows significant language from S.B. 252 relative to the treatment of pass-through revenue. That is to say the subcontractor, the contractor, the affiliated group languages are all included in this bill. This will allow us to differentiate from a traditional gross receipts tax upon which the rate would apply to every transaction to this tax, similar to what the Governor's BLF did in terms of the tax base removing some of those pass-through transactions in which there would be a tax on a tax.

Senator Brower:
Senate Bill 378 differs significantly from S.B. 252 in that all types of revenue are treated equally in S.B. 378. Are there any categories that are intended to account for the differing typical margins in industry?

Mr. Aguero:
That is right. A single uniform rate is applied to every business in every industry. With respect to the differential relative to the $25,000 standard exemption each quarter, there is a substantial difference between what is proposed in S.B. 252 and what is proposed in S.B. 378. There is no differential treatment for businesses in various industries. We essentially assume that all of those revenues will be treated the same, which probably makes it closer to a traditional gross receipts tax than what was proposed by the Governor.

Senator Brower:
Would you confirm that in light of that difference, you believe that S.B. 252 is a more fair approach than that of S.B. 378?

Mr. Aguero:
I can provide testimony from my own perspective, but I hesitate to speak on behalf of the Governor. From my perspective, yes, there was an absolute reason why those differential rates were built into the Governor's Business License Fee proposal. That was the belief, the understanding, the expectation that businesses are not all the same. Therefore, the rates need to reflect those differences.

Senator Spearman:
Let us keep in mind that the goal is to make it simple. The goal is to make it simple: to administer, to calculate and to collect. Improvements can be made to S.B. 252 and S.B. 378. This plan looks to broaden the base. Under the MBT, we have 12,000 business that contribute. Under S.B. 378, because the base is

so broad and it is uniform, we have quadrupled that. We heard from colleagues yesterday in the Committee of the Whole that when a business owner has four or five businesses, the accountant charges $1,000 just to calculate what his or her taxes are. This proposal is easy to calculate.

Senator Brower:
To clarify, you said that your plan would quadruple the number of taxpayers. Did you mean that it will quadruple the number of taxpayers who pay under the MBT, not quadruple the number of taxpayers who pay under BLF in S.B. 252?

Senator Spearman:
That is correct. We have 12,000 businesses. It is difficult to guesstimate, because we do not require industries to provide much information. There are 60,000 to 70,000 people now participating.

Senator Kieckhefer:
I am concerned if we repeal a revenue stream that is targeted to generate $825 million over the next biennium—obviously, one of our major revenue sources for the General Fund. I have similar concerns over S.B. 252, and that has to do with the revenue projections that are created—accounts we normally bank on to fund our budget. Those concerns are mitigated by the fact that the other revenue streams have a certain track record and are built into the budget. This proposal exacerbates that fear rather than mitigates it because of the immediate elimination of $825 million worth of revenue.

Can you tell me about your faith in these estimates to generate this level of revenue and why you feel that level of confidence?

Senator Spearman:
Both S.B. 252 and S.B. 378 are parts of a whole. You will have income for the last fiscal year, and there will only be a difference of collection time by 10 to 12 days by eliminating the MBT, and then the other tax will be collected.

Senator Kieckhefer:
It is not as much of a cash-flow issue as it is a projection in terms of revenue collection issue. Based on this proposal, $1.3 billion of revenue is built into the fee structure. If the cash does not materialize up to projection, it will have a significant impact on our ability to fund the budget. My concern is putting too many eggs in one basket.

Senator Spearman:
It is not putting all the eggs in one basket, it is just one piece of the puzzle. If you are concerned that the change will cause a fluctuation in revenue, any proposal that we put forward includes certain risk. The risk has been mitigated because the LCB fiscal analysts have looked at all of the pieces. This is not designed to be the silver bullet. This is one piece of the puzzle. We still have to discuss Internet sales tax, Live Entertainment Tax (LET) and many other new proposals. There will be risk with every plan that comes forward. Those risks are mitigated because of the time and due diligence we have taken to go through all of the scenarios.

Chair Roberson:
Senate Bill 378 is identical to S.B. 252 in many respects. Let us look at the differences. Senator Denis said that the goal is simple, broad-based and fair. This bill is simple and broad-based, but it does not seem fair. It is a more stable tax the closer you get to a true gross receipts tax, but you lose the equity. My concerns are that it is more of a true gross receipts tax. There is no differentiation between industries. The high-volume, low-margin businesses would be disparately impacted.

It is risky to put all your eggs in one basket immediately. We need to eliminate the MBT over time, but to eliminate $825 million in biennial revenue in one fell swoop is risky—it makes me uncomfortable.

Looking at the chart in Exhibit D, this bill will significantly burden smaller businesses. The rates are much higher than in S.B. 252 and the $25,000-per-quarter threshold will not generate a lot for exemption. Since that rate does not progress as businesses grow in revenue, it strikes me as overly burdensome on small businesses.

Senator Spearman:
The Task Force of 2002 said there is a structural defect. There is consternation when there is change. The intent is to broaden the base. The MBT revenue has declined. If the MBT had done everything we wanted it to do, we would not be discussing this. There is a system defect in the way our revenue structure stands. Any time there is a system defect, you do not dress it up, you fix it. The MBT is not as good for Nevada as everyone expected. Senate Bill 378 is quite different from anything that has been proposed in the last two Sessions.

We have to make bold choices and look at things we have not done. Senate Bill 378 is something quite different. We are talking about half a penny on every dollar. About 75 percent of all businesses in Nevada fall under the $25,000 threshold. We are protecting small businesses and allowing them to grow.

Senator Denis:
I have had a couple of small businesses in the past. By eliminating the MBT, you eliminate the necessity of accountants to calculate the tax. It is simpler for small businesses and thus eliminates a step.

Chair Roberson:
It seems that 75 percent of all businesses are not paying the MBT anyway.

Senator Spearman:
That is true. That is what I mean by broadening the base. Economically, you bring in more people who participate in the success of Nevada. Currently it is less than 4 percent. This way it broadens the base and captures most businesses that are in Nevada. Any time we broaden the base, we can lower the rate.

Chair Roberson:
I was making a different point. Many of the same businesses that are not paying the MBT will not potentially pay this under the $25,000. Be that as it may, I accept your point.

Senator Denis:
There are small businesses that will benefit from not having to do the extra things.

Chair Roberson:
To the extent they pay their business license fees, the same small businesses would pay a much lower rate than they would under this bill. My concern is for the small businesses.

Senator Spearman:
The effective tax rate may be lower in S.B. 252, but that does not accommodate the fact that the MBT still exists.

Chair Roberson:
The smallest businesses and the rate we would ask them to pay under the BLF take the MBT into account. Those really small businesses do not pay the MBT. Getting rid of the MBT does not affect the small businesses.

Senator Denis:
That could be true in some instances. Under the BLF, it will depend on the industry. It will vary.

Senator Spearman:
Under S.B. 378, we do not double the BLF, but in S.B. 252 the BLF doubles and goes to $400.

Chair Roberson:
We will look at your chart and compare it to S.B. 252. We need to look at how these proposals affect small businesses.

Paul Moradkhan (Las Vegas Metro Chamber of Commerce):
I have my written testimony (Exhibit E) to attest to my neutral position on S.B. 378.

Senator Hardy:
To the guru of business, what is the definition of small business?

Mr. Moradkhan:
For small businesses nationally it is 50 employees. In Nevada, it is 25 employees. The Las Vegas Metro Chamber of Commerce uses 25. Our membership of nearly 5,000 is made up of 85 percent small businesses.

Senator Kieckhefer:
You are basing the small business on employee count?

Mr. Moradkhan:
Yes, that is correct.

Senator Kieckhefer:
Do you consider using a definition that considers revenue?

Mr. Moradkhan:
Typically, we use the employee count. It is considered small business by employee count both locally and nationally.

Harry Hinderliter (Nevada Bankers Association):
I have my written testimony (Exhibit F) in support of my neutral position on S.B. 378.

Phyllis Gurgevich (Nevada Bankers Association):
I have submitted my written neutral testimony in Exhibit F as well.

Stan Wilmoth (President, CEO, Heritage Bank; Nevada Bankers Association):
Heritage Bank is a small business in Nevada comprised of 75 employees, primarily Nevada families. We help people achieve their goals every day. We have helped small businesses in the last 5 years in Nevada. We have 13 banks in Nevada.

Samuel P. McMullen (Nevada Bankers Association):
I am neutral on S.B. 378.

Carole Vilardo (President, Nevada Taxpayers Association):
I remain neutral on this bill. Call it a tax, not a fee. It is a tax. That goes for S.B. 252 as well. These are revenues that are used to fund general government. A fee sounds softer than a tax. Confidentiality of records needs to be addressed as well. If we are looking to the policy to simplify, why do we single out different industries? The only logical reason we look at banks and mining differently is due to revenue. Gross revenues is a preference of government. Businesses do not like gross. With gross, the inability to pay the tax is not an option.

David Goldwater:
I am a neophyte, but I have worked on tax policy since 1997. We seek fairness in taxes. Achieving that balance in fairness is difficult. It is subjective because it comes down to either charging a new tax or raising a tax rate.

Nancy Brune (Executive Director, Kenny C. Guinn Center for Policy Priorities):
We testify neutral and have submitted a chart (Exhibit G) comparing effective

tax rates on S.B. 378, S.B. 252 and Assembly Bill 464.

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

Chair Roberson:
Mr. Aguero, please explain the differences between S.B. 378 and S.B. 252.

Mr. Aguero:
The intent of both bills is the same. I will key in on the policy differences between S.B. 378 and S.B. 252. Senate Bill 378 has three distinct elements, the first provides an alternative way of generating $250 million to fund education—using the single rate versus multiple rates. The single rate is to simplify the tax. Businesses in different industries have different structures and make it difficult. The multiple rates are to make the tax more equitable. The other difference is having a standard exemption of $25,000 quarterly. Some small businesses will pay more under S.B. 252, just as some small businesses will pay more under S.B. 378.

Senator Hardy will also ask me for the definition of a small business. So I emailed a copy of the definition of a small business according to the Small Business Administration. Definitions are different for manufacturing or nonmanufacturing enterprises. I also refer to microbusinesses, people who work out of their homes and make 66.67 percent of the average statewide wage. Those businesses would be treated the same under S.B. 378 and S.B. 252. But different industries are going to be just different.

The second part of S.B. 378 is tax neutral tax policy. The second piece replaces the payroll tax with a modified gross receipts tax. In S.B. 252, and S.B. 378, both will reflect more of our current economy and be more stable over time because the base is larger and the rate is lower overall, but we are replacing a payroll tax with a gross receipts tax. The downside of S.B. 378 is risk. It is a new tax.

The third element of S.B. 378 compared to S.B. 252 is in terms of the treatment of small businesses within the BLF which include 330,000 businesses and make up the broadest base of the tax. The smallest businesses will see their BLF raised from $200 to $400 in S.B. 252. Every business has the ability to help fund education and each is willing to participate. In S.B. 252, small businesses that have no employees and those which are considered paper businesses file in the State and have a minimum they each pay.

In summation, S.B. 378 is a thoughtful, well-constructed, viable and admirable attempt at a solution. Policy issues that are raised are as follows: Do we want a single rate or multiple rates? Do we want to replace the MBT, the payroll tax or is that a question for another day? Ultimately, what about the treatment of small businesses? It will depend on size and whether businesses can participate or not. Those are the differences between the two bills.

Senator Ford:
Fair, sustainable or stable, which is more important—which do we want? Obviously, we want all of them at the greatest level possible. While it has been a great effort on the Governor's part, it is an imperfect approach because businesses have the opportunity to game the system but it is equitable as opposed to Senator Spearman's approach, which is fair but not as equitable. It comes down to a judgment call to ascertain which one of these policy points is considered more important in the differences in the bills.

Chair Roberson:
No one with any credibility has said that S.B. 252 will enable anyone to game the system. Deonne Contine of the Department of Taxation said that every business is given a North American Industry Classification System (NAICS) code. In order for a business to change the NAICS code, you have to make a case before the Department of Taxation why you want to change your NAICS code.

Senator Ford:
The Guinn Center said: "Senator Spearman's plan eliminates the incentive to pick and choose rates to game the system." I consider the Guinn Center a reputable source. There is sufficient debate on which of the plans is more appropriate to meet the needs.

Senator Brower:
The Guinn Center is reasonable, legitimate and does great work. The record does not suggest that gaming of the system would be anything but tax fraud. If there is a good faith belief that one NAICS code applies over another, that is a matter between the taxpayer and the Department. Gaming the system suggests

committing fraud. That is not the Governor's plan. The Department would not allow it. We would not allow that.

Senator Ford:
Everyone is entitled to his or her opinion. I view the charts as problematic and far from simple. This is on the single rate. The second component is the tax neutral, the gross receipts bill and the phasing out of the MBT that most people think is bad tax policy. In terms of small business, the effort is to make certain that all small businesses take advantage and participate in our State. The BLF would be raised from $200 to $400, and this is real money that small businesses feel. Both bills make an effort to weigh three things: fair, sustainable and stable, which comes down to a judgment call.

Mr. Aguero:
The judgment call is between a single rate versus multiple NAICS rates. Yes, the vast majority of businesses will have no problem ascertaining which industry the business will fall in. A fraction of the fraction of the businesses will fall into that iffy category. Different businesses are different. Every business has the potential to be gaming. The record has been made clear that the attempt to escape taxation would be little more than fraudulent. We cannot stop that.

When evaluating policy in regard to S.B. 252 and S.B. 378, we need to weigh simplicity versus equity and weigh transparency versus neutrality. It is not easy. We either make it fair or make it simple and apply it across the board.

Senator Spearman:
Other states are trying to phase this out. Did I hear that correctly?

Mr. Aguero:
We were referring to apportionments. In S.B. 378, the elegance that comes with the idea that we do not require apportionment is carried over from S.B. 252 into S.B. 378. There are two different ways of applying a tax. Let us say your company generates revenue from all over the Country and earns $10 million in revenue. In many states, taxes are calculated by a three-factor apportionment rule by factoring revenue, property value and payroll expenses in this state and compare that to each of the other states you do business in. You then pinpoint what will be required as payroll. Many states are going to the single factor apportionment, revenue. The apportionment concept would be eliminated in S.B. 378 and reflects elements of S.B. 252.

Senator Ford asked about the tax neutral policy regarding banking and mining. There is a reason why mining is treated differently in both bills. It is not to carry over the legacy of the payroll tax. The reason that it is carried over in both bills is because mining will not pay anything under those taxes. We have a Constitutional prohibition against imposing this tax on the vast majority of their revenue. That is why it is treated differently.

The idea of phasing out the payroll tax is happening. It can be phased out over 10 years, 5 years, or 1 year. Both bills in some ways phase out the payroll tax. The treatment of small business is a real issue. The best policy will be the widest possible base with the lowest possible rate.

Senator Spearman:
Under S.B. 378, some businesses will pay more and some businesses will pay less, but everyone will pay the same rate. Senate Bill 378 is simple to administer, calculate and collect and can be adjusted. When looking at S.B. 252, I argue that simplicity counts.

Mr. Aguero:
I agree with everything Senator Spearman says. When I evaluated S.B. 378, I did not discuss the ramifications of the higher taxes. If we talk about replacing the $250 million, the tax rate will have to be higher in the gross receipts plan because it is a little lower than the businesses that are paying $200 versus $400. The second element is a tax-neutral replacement of the MBT. The effective tax rate on our overall economy is exactly the same. The difference is the incidence of the tax. My point is that incidence is going to matter—some businesses will be higher and some businesses will be lower.

Senator Spearman:
The effective tax rate of both is the same. We broaden the base wide enough to capture more businesses. Finding out the number of businesses and the amount of revenue in the State are important. Whether we look at S.B. 378 or S.B. 252, we have guesstimations. We do not have the vehicle to capture the actual gross receipts. Uneasiness about phasing out the MBT is the risk that causes concern, but it is the same risk with each bill and depends on how you look at it.

I speak with bad grammar, but if the MBT ain't working, we have a moral obligation to come up with a tax structure to make our tax structure work and grow with Nevada. If we do not, we will be discussing the same thing in another session.

Senator Hardy:
Is there a Laffer curve on taxes for small business growth as defined by the NAICS code? In looking at the predictability of the two bills, which one does business like? Which one is easier to compute? What is the simplicity of each on a scale of 1 to 10? What is the ease of collection, variability and auditability?

Mr. Aguero:
Many studies have attempted to measure the optimal point of business taxation. With regard to the taxes when rates go down, you will generate more taxes with more business activity. Nevada has benefitted from this economic theory. There is a reason that we have been among the fastest growing states for the last 50 years.

We hear from constituents increasing any tax is going to be unbearable. For everything from public safety to higher education, I would like to believe that either S.B. 378 or S.B. 252 will make Nevada competitive. All the economic development department folks testify that this is the tax structure we need. The reasons our businesses are declining or leaving have been specifically tied to our failures in education.

Senator Hardy:
How do you audit? How do you verify it? How do you predict it? Any difference? The MBT worked, even throughout the recession.

Mr. Aguero:
When we talk about simplicity versus complexity, a single rate is simpler. In terms of auditing, the definition of that is revenue. The apportionment rules are similar in both bills.

Senator Hardy:
What about the ease of collection?

Mr. Aguero:
Collection will be similar, except in S.B. 378 where it specifies $25,000 per quarter will leave a large portion of the business taxpayers no longer reporting. The burden on the Department of Taxation would be proportionately less.

Senator Hardy:
Will you compare these two proposals with the Modified Business Tax?

Mr. Aguero:
Both S.B. 378 and S.B. 252 are going to be more stable. Part of the stability in the payroll tax is that we have adjusted the rate. As the economy went down, we looked to it to make more revenue. Auditability will be similar. In both bills, we address pyramiding, allowing for subtractions to that revenue which add complexity. There is complexity in both. I would trade off a little simplicity for equity.

Knight Allen:
I have four quotes to read to you.

"Profits of merchants are a subject not taxable. The final payment of all such taxes must fall with a considerable overcharge upon the consumers." Adam Smith, *Wealth of Nations*.

"The gross receipts tax is hidden in the cost of goods and services sold." Governor's Task Force on Tax Policy, October 9, 2002.

"If you know what is coming in terms of tax, you will be able to adjust the price of Pop-Tarts or dog food in a way that will be most palatable for your clients or most profitable for yourself." Guy Hobbs, Chair of the Governor's Task Force on Tax Policy in the *Las Vegas Sun*, November 24, 2002.

"There is no tax that doesn't ultimately get passed on to the consumer." Governor Kenny C. Guinn, State of Nevada, *Las Vegas Review-Journal*, January 16, 2003.

All of these taxes will be passed on. If you push these taxes through, they will fall most heavily on the weakest and most disenfranchised consumer. Do not tax the necessities of life.

Paul J. Enos (CEO, Nevada Trucking Association):
I am here to testify in opposition to S.B. 378. There are issues with cash and accrual. The trucking industry has a lot of small businesses where the average profit margin is 1.65 percent. This would result in a 28 percent tax hit to our businesses.

We also have an issue with inter- and intrastate businesses coupled with the elimination of the MBT. Our small Nevada businesses will bear the lion's share of this tax. We do not tax interstate transportation. We tax that transportation where the origin and the destination are in Nevada. Once again, large businesses that do interstate transportation would not pay taxes, and the small intrastate motor carrier will pay more. This bill and S.B. 252 proportionately hit our small businesses.

Bryan Wachter (Retail Association of Nevada):
On behalf of the Retail Association of Nevada, we have issues with S.B. 378 and S.B. 252, specifically with the pyramiding. A gross receipts tax creates an extra layer of taxation on each layer of production. We are not in favor of eliminating the MBT. The supplemental revenue fee is fundamentally wrong.

The MBT is broad-based. Nationwide, there are 28 million small businesses, 22 million of those do not have employees and do not pay payroll. In Nevada, for the number of businesses that pay taxes based on economic activity, the MBT does exactly what is intended. Under S.B. 378, there is no accounting for the cost of goods or cost of business. At least S.B. 252 tried to take into account the difference between high- and low-volume companies. Based on the projections that this revenue could provide, they are only estimates, and the revenue projections may not even be met. We know what tax has worked in the past.

Wayne Frediani (Nevada Franchised Auto Dealers Association):
We are opposed to S.B. 378. We cannot support a gross revenue tax. We pay $5.2 million on the MBT. On this gross tax, we would pay $33 million. We cannot support either S.B. 378 or S.B. 252.

Senator Ford:
How is less than half a penny going to cause that much disruption on your industry? Maybe the MBT is not an accurate reflection of what should be paid based on your totals and what you would pay under S.B. 378 or even S.B. 252.

Mr. Frediani:
I am basing the calculation on the percentage multiplied by the gross revenue.

Chair Roberson:
Does the industry in the State pay a little over $5 million on MBT on $7 billion in gross revenue?

Mr. Frediani:
That is correct.

Ray Bacon (Nevada Manufacturers Association):
Referring to the NAICS code, gaming machines are sold by gaming companies on a global basis. The taxable revenue would be decided upon the sales of gaming machines in the State. That needs to be sorted out in terms of changing NAICS codes.

The MBT is not to blame for layoffs in a recession. The real reason for the layoffs were due to the collapse of the market. We need to come up with an equitable and reasonable tax.

Terry Graves (Scrap Metal Processing Group; Nevada Cogeneration Association):
We oppose S.B. 378. We have concerns with pancaking and pyramiding and a gross receipts tax. There are issues with predicting revenues. If there is an unexpected expense late in the year taking the business from profitability to nonprofitability, the only way to afford taxes is to take out a mortgage on the business. Most of my clients prefer the MBT.

Chair Roberson:
I close the hearing on S.B. 378.

Chair Roberson:
The Committee meeting is adjourned at 6:16 p.m.

RESPECTFULLY SUBMITTED:

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Jennifer Pearce,
Committee Secretary

APPROVED BY:

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Senator Michael Roberson, Chair

DATE:______________________________

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
S.B. 378	C	18	Senator Pat Spearman	Revenue Reform Proposal Presentation
S.B. 378	D	2	Senator Pat Spearman	Proposed Tax Tables
S.B. 378	E	2	Paul Moradkhan	Written Testimony
S.B. 378	F	5	Nevada Bankers Association	Written Testimony
S.B. 378	G	2	Kenny C. Guinn Center for Policy Priorities	Written Testimony