

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

**Seventy-Eighth Session
March 26, 2015**

The Senate Committee on Revenue and Economic Development was called to order by Chair Michael Roberson at 3:35 p.m. on Thursday, March 26, 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:

David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Tony Rivano, Committee Secretary

OTHERS PRESENT:

Chris Nielsen, Deputy Chief of Staff, Office of the Governor
Deonne Contine, Executive Director, Department of Taxation
Mike Willden, Chief of Staff, Office of the Governor
Jim Wells, Interim Director, Department of Administration
Bryan Wachter, Retail Association of Nevada

Senate Committee on Revenue and Economic Development
March 26, 2015
Page 2

Carole Vilardo, Nevada Taxpayers Association
Dagny Stapleton, Nevada Association of Counties
Joanna Jacob, Associated General Contractors, Las Vegas Chapter; Nevada
Contractors Association
Brian Reeder, Nevada Chapter Associated General Contractors of America, Inc.

Chair Roberson:

Let the record reflect that all Committee members are present. We will start with the work session on Senate Bill (S.B.) 252.

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

Chris Nielsen (Deputy Chief of Staff, Office of the Governor):

Testimony will cover Proposed Amendment 9814 to Senate Bill 252 in the work session document (Exhibit C). Part of this amendment is the result of collaboration between Committee staff; Deonne Contine, Executive Director, Department of Taxation; Jeremy Aguero, Principal Analyst, Applied Analysis; and me. The Proposed Amendment 9814 is in response to concerns that surfaced in the Senate Committee on Revenue and Economic Development meeting covering S.B. 252 on March 18. Portions of Proposed Amendment 9814 address technical issues, while the sunset concerns are addressed in the first seven pages. The bulk of the provisions concern policies on the failure to pay taxes and adding the Business License Fee (BLF) to existing statutes.

Deonne Contine (Executive Director, Department of Taxation):

The first change in Proposed Amendment 9814 is addressed in the preamble and is the result of concerns from various Committee members and others that the money raised in the bill would be spent on education. Senator Joe Hardy of Senatorial District No. 12 worked with Legal Division staff to produce a preamble indicating the bill's intent and necessity.

In section 7, page 1, lines 1 and 2 of Proposed Amendment 9814 correct a typographical error, changing the word industrial to industry. Section 8, subsection 1, paragraph (d), subparagraph (2), page 2, line 9 amends "and" to "or." Line 35 of section 8, subsection 2, paragraph (b), covers the "controlled by" section clarifying that ownership, control or possession requires 50 percent or more of a business. On page 2, section 13, subsection 1, paragraph (e), line 52 adds the provision that a business has a sufficient nexus with the State.

Page 2, section 13.5, lines 55 through 57 and lines 1 and 2 on page 3 discuss the treatment of entities that are classified by more than one specific code in the North American Industry Classification System (NAICS).

On page 3 of Proposed Amendment 9814, [Exhibit C](#), section 15, subsection 2, paragraph (a), lines 13 through 15, and paragraph (b), lines 16 through 19 concern document types and specify general guidelines for the Department of Taxation to make regarding regulations of said documents.

On page 3, section 19, subsection 2, lines 24 through 29 include a provision permitting the Department to allow annual reporting in certain situations.

On page 4, section 20, subsection 1, paragraph (e) subparagraph (2), lines 18 and 19, and paragraphs (f) and (g) permit the insurance premium tax on surplus lines and captive insurers to be subtracted from gross revenues.

Section 22, subsection 1, lines 43 through 47 on page 5 cover client companies or companies that lease employees from employment leasing companies. Section 22 clarifies that if a company leases its employees through an employee leasing company, the company is deemed a wage-paying employer for purposes of calculating the BLF. This precludes the company from circumventing the requirement to pay the BLF on its revenue. In section 22, subsection 2, lines 49 and 50 permit the Department to authorize smaller entities to pay the BLF annually.

In section 33, subsection 1, paragraph (b), line 4 on page 6 changes the word taxes to taxis.

On page 7, section 50, line 7, and section 50, subsections 1 and 2, lines 8 through 13 cover cash flow concerns for certain business and permit businesses to choose either accrual or cash basis accounting. Section 50 also states that the business may not change its accounting basis, the accounting method, more often than once every 3 years.

Section 51, subsection 1, also on page 7, covers the due process provision with the Department for revocation of a business license. The remainder of Proposed Amendment 9814 in [Exhibit C](#) covers the changes mentioned in Mr. Nielsen's testimony dealing with the various licensed industries and entities that have records relating to businesses. Section 51 directs the Department to

view these records and notify those entities when they are not paying the BLF. The Department can take action against these businesses and revoke their charters, contingent upon a proper due process hearing. This action currently applies to all taxpayers who pay the Modified Business Tax (MBT); thus, the provisions outlined in section 51 align the Business License Fee component with the MBT provisions.

Mr. Nielsen:

Section 161 on page 23 of Proposed Amendment 9814 in [Exhibit C](#) permits the Department to waive penalty or interest payments for the first year if a good faith effort is made to comply with the BLF. Section 161 also provides a mini-amnesty for the first year regardless of when the audit occurs; thus if an audit takes place in Year 4, Year 1 would still be protected under section 161. This provision was introduced by Carole Vilardo of the Nevada Taxpayers Association.

Chair Roberson:

We will close the work session on Proposed Amendment 9814 to S.B. 252. We will open the hearing on S.B. 483.

SENATE BILL 483: Revises provisions relating to governmental financial administration. (BDR 32-1182)

Mr. Nielsen:

Senate Bill 483 includes the sunset taxes the Legislature put into place in 2009, which were subsequently extended in 2011 and 2013. We believe that the continuation of the sunset revenue is necessary for the government cost of doing business given the growing population and other roll-up costs. For example, the number of new kindergarten through Grade 12 students since the sunset taxes were first put into place is 21,000. Enrollment projections through 2017 are 33,000 students.

In addition to the sunset projections of the bill, the two other components relate to the Modified Business Tax and Cigarette Tax. Sections 1 and 2 increase the MBT on mining companies to the rate of 2 percent; this would be consistent with how MBT treats financial institutions. Section 3 increases the wholesale Cigarette Tax from 40 mills to 60 mills for a cigarette, which increases the tax on a 20-count pack of cigarettes from \$.80 to \$1.20 a pack. The average nationwide state cigarette excise tax is \$1.54. The \$1.54 average does not

include additional state and local taxes that most jurisdictions impose. Specifically, the average state excise tax rate among the five surrounding states is \$1.27.

Section 5 of the bill ensures that cigarette stamps purchased before July 1 but not affixed prior to this date require the wholesalers to repurchase the stamps at a higher rate. This will ensure and prevent companies from stockpiling stamps prior to the change in the tax rate if it occurs.

Section 6 of the bill addresses prepayment of mining taxes that went into effect in either 2010 or 2011. The prepayment provision caused current biennium projections to be off due to the prepayment estimate true-up mechanism that is in place. Section 6 maintains the prepayment system for fiscal year (FY) 2016, but eliminates it in FY 2017. Without legislative action, the Economic Forum projected that the State would not receive any Net Proceeds of Minerals Tax (NPOMT) in FY 2016, but would receive the NPOMT in FY 2017. Section 6 ensures the State receives the NPOMT in FY 2016, but not in FY 2017.

It important to emphasize that the mining companies would pay their estimated NPOMT in FY 2016 based on their estimate of net proceeds for calendar year 2016 operations and then true up against estimate in FY 2017. Beginning in FY 2018, mining companies will pay the NPOMT based on the actual preceding calendar year net proceeds.

Under law and absent any further action by this body, the health and industrial insurance deduction for the NPOMT would be permitted to be taken in FY 2016. Section 9 of the bill delays the deduction until FY 2017, which is consistent with the unwinding of the prepayment.

Sections 10, 12, 13 and 14 of the bill permanently extend the MBT rate for nonfinancial businesses. The small business exemption would remain in place for businesses having quarterly payrolls of less than \$85,000. For businesses with payrolls greater than \$85,000, the rate would continue to be 1.17 percent. Section 7 of the bill is another sunset piece, proposing to permanently continue the 0.35 percent increase in the Local School Support Tax (LSST) component of the sales tax, i.e., the current sales tax rate would remain the same. Section 7 also extends the reduction and depreciation permitted for vehicles with respect to the Governmental Services Tax (GST) and continues to allocate the revenue to the General Fund. This represents a temporary extension for 2 years.

Mike Willden (Chief of Staff, Office of the Governor):

The Office of the Governor has worked with this Committee and staff over the past several months and has identified three basic components. The first component concerns the sunsets. Originally indicated in Governor Brian Sandoval's budget, the sunsets would help in two areas; they would add approximately \$550 million to the General Fund. However, the provisions in S.B. 483 will not achieve this goal since the GST commissions and penalties are not included in the bill. We believe that these taxes will be heard after the Economic Forum meets in May 2015.

The second component is the depreciation portion of the GST in this bill. The nonsunsetting revenue will help the LSST through the sales tax provision, generating approximately \$377 million. The piece in the Distributive School Account not included in this bill is Initiative Petition No. 1 of the 75th Session, the transient lodging tax, the provision that will be addressed in a subsequent meeting. The amount of revenue generated from this tax is approximately \$308 million.

The third component includes the Cigarette Tax, which will generate revenue of approximately \$39 million a year at the \$1.20-a-pack level. Some estimates suggest moderately lower revenues in the mid-\$30 million range; nonetheless, the Office of the Governor's balance sheet shows the revenue generated from the Cigarette Tax as \$39 million.

The bill also proposes increasing the MBT on mining from 1.17 percent to 2 percent, which was originally projected to generate \$14.5 million over the biennium, but latest projections show the amount of revenues generated at just under \$10 million over the biennium.

Jim Wells (Interim Director, Department of Administration):

Section 1 of the bill, relating to the Modified Business Tax for mining companies and charging them at the same rate as financial institutions, would generate approximately \$4.9 million a year or \$9.76 million for the biennium.

Section 3 of the bill relates to the Cigarette Tax that would generate approximately \$39 million in each year of the biennium or \$78 million over the course of the biennium.

Section 6 relates to the Net Proceeds of Minerals Tax and the delay in ceasing the prepayment that would generate approximately \$39.2 million in FY 2016, but would reduce the Economic Forum estimates by approximately \$31.1 million in FY 2017, resulting in a net impact of approximately \$8 million for the biennium.

Section 7 of the bill deals with the Local School Support Tax, which is projected to generate approximately \$183 million in FY 2016 and \$193 million in FY 2017 for a total of approximately \$376 million over the biennium.

Section 10 of the bill permanently changes the MBT rates and would generate approximately \$135 million in FY 2016 and \$142 million in FY 2017, resulting in approximately \$277 million for the biennium. In total, the bill would generate approximately \$879 million—\$502 million will be allocated to the General Fund and approximately \$376 million for the Distributive School Account.

Senator Ford:

As provided in section 1, would the MBT generate \$4.9 million for each year of the biennium?

Mr. Wells:

Correct. The MBT would generate approximately \$4.9 million for each year of the biennium, for a total of \$9.7 million for the 2 years.

Senator Ford:

Would you repeat your testimony regarding the \$39.2 million generated in section 6?

Mr. Wells:

Section 6 covers the Net Proceeds of Minerals Tax and the delay in discontinuing the prepayment provisions. Mining companies would have to prepay the NPOMT in FY 2016 and cease the prepayment in FY 2017. The Economic Forum's current projections are reversed since the sunset requires the prepayment to cease in FY 2016. As a result, there is no NPOMT collection in FY 2016 because it was collected up front. The proposed bill changes would result in the State collecting approximately \$39 million in FY 2016 and the prepayments ceasing in FY 2017. Economic Forum projections have the NPOMT starting in FY 2017 with the delay in collection resulting in the \$31 million revenue loss for FY 2017.

Senator Ford:

Is there a net increase of \$8 million over the biennium?

Mr. Wells:

Between the 2 years, the total amount is \$8 million. Starting in FY 2018, mining companies would pay the NPOMT after the fact on a recurring basis.

Senator Ford:

With respect to section 7, were the projected Local School Support Tax amounts \$108 million and \$193 million?

Mr. Wells:

The LSST projections covered in section 7 are \$183 million for FY 2016 and \$193 million in FY 2017 or a total of \$376 million for the biennium.

Senator Spearman:

Would the Modified Business Tax be permanently extended?

Mr. Nielsen:

Yes, we propose permanently extending the MBT.

Bryan Wachter (Retail Association of Nevada):

The Retail Association of Nevada (RAN) is in favor of S.B. 483. The RAN had initially opposed sections 3 through 5 covering the Cigarette Tax, as they were not part of the original package, but RAN now favors the bill moving forward since businesses require stability, and debating changes to the sunset provisions every 2 years does not provide stability. The RAN would prefer to see the changes proposed in the bill made permanent, knowing that other conversations taking place in different parts of this body may affect some individual taxes. The Association believes that it is time to make the sunset provisions permanent.

Carole Vilardo (Nevada Taxpayers Association):

The Nevada Taxpayers Association is neutral on the bill. I would like the Committee to consider the following issues. With respect to the MBT mining tax, we never supported having the high exemption. Making the exemption permanent would remove most of the individuals who may have skin in the game. Without a vested interest, there is no reason to be concerned with how to spend the money.

With respect to the Cigarette Tax, the presenters indicated that the \$39 million revenue projection is probably ambitious, which it is because previous Cigarette Tax increases have generally not kept abreast of inflation. The fact is that the State's Cigarette Tax collection is on a downward slide since higher taxes have deterred cigarette purchases. A policy consideration that needs to be addressed is whether the State is trying to stop smoking through punitive taxation, which warrants a higher tax increase, or is it using the increase for revenue? It is hard to understand the intent of the Cigarette Tax through tax increases while at the same time opposing cigarette smoking. Complicating the issue is that the increase in the Cigarette Tax does not appear to meet the revenue expectations in the long run. Consequently, the Cigarette Tax will require adjustment.

Increasing the NPOMT to the 2 percent rate, which matches the tax rate assessed on financial institutions, is understandable; however, what was the rationale for financial institutions being assessed a 2 percent MBT? It appears that financial institutions were being punished. It also appears that this same logic is being applied to mining. I would prefer tax discussions based on pure policy rather than punishing a specific industry through punitive tax policy.

I am personally disappointed with extending the money on the Governmental Services Tax for an additional 2 years without the proceeds going to the State Highway Fund. The diversion originally scheduled to be in effect until FY 2013 was subsequently extended to FY 2015. Section 7 of the bill proposes extending the effective date for the GST proceeds to be deposited in the State Highway Fund from July 1, 2015, to July 1, 2017, and will necessitate discussions regarding highways and highway funding.

I served on the 2007 Blue Ribbon Task Force to Evaluate Nevada Department of Transportation Long-Range Projects that came up with the provision known as Bump 10. Bump 10 was an increase of 10 percent in the depreciation rate of vehicles for calculating the GST, resulting in raising vehicle registration fees. This idea had been discussed several times and was finally passed in 2009 as S.B. No. 429 of the 75th Session.

I understand the bill and the revenue needs, but the policy issues I raised should be on record. There will be additional tax bills, such as the bills covering the Live Entertainment Tax and the marijuana tax, to which adjustments can be made through a trailer bill.

Senator Ford:

I thought the Economic Forum was developing a GST proposal.

Mr. Willden:

There are two pieces to the Governmental Services Tax. The depreciation piece of the GST is in this bill and is moving forward. The other piece of the GST is in the commissions and penalties portion, which is scheduled to be heard after the Economic Forum meets in May 2015. The rough number is approximately \$29 million to \$30 million a year, but the exact figure will not be available until the Economic Forum meets and provides its forecast.

Dagny Stapleton (Nevada Association of Counties):

The Nevada Association of Counties is neutral on the bill. We would like to address section 6 and how it affects counties. The Net Proceeds of Minerals revenue not only goes to the State but also to the counties. The removal of the prepayment of net proceeds provides relief to some of the smaller rural counties that depend on the NPOMT tax in connection with their budgeting process. During the Great Recession, some counties were relying on the NPOMT for their general funds. Because of the fluctuations in the economy and the drop in gold prices, the NPOMT payments especially in FY 2014 were significantly lower than the prepayment amounts. This forced a couple of rural counties to make quick adjustments to their budgets. One of the counties was required to send a significant refund to the State. The removal of the prepayment of the NPOMT would help to avoid future occurrences of this kind.

Joanna Jacob (Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association):

We do not oppose the entire bill, but we have objections with section 7 as it pertains to the continued diversion of Governmental Services Tax funds away from the State Highway Fund. The revenue from the GST was allocated to the General Fund until June 30 and then was required to be deposited in the State Highway Fund thereafter. Section 7 of the bill extends the diversion of GST funds to the General Fund for an additional 2 years, or until July 1, 2017. The Associated General Contractors Las Vegas Chapter and Nevada Contractors Association along with the Nevada Chapter Associated General Contractors are concerned with the long-term sustainability of the State Highway Fund. Transportation funding is a priority issue for us, and we are not only concerned with funding new projects but with keeping up long-term maintenance requirements. We understand that there are many difficult decisions in the

weeks ahead. We want to ensure that the State Highway Fund remains part of the conversation as this Committee considers new revenue sources along with trying to balance the budget and making budget determinations.

According to the Economic Forum, the actual FY 2014 GST figure on the depreciation schedule is \$62.267 million, which could have gone to the State Highway Fund—for FY 2015 the projection is \$62.898 million.

Brian Reeder (Nevada Chapter Associated General Contractors of America, Inc.): Nevada Chapter Associated General Contractors of America, Inc., also opposes section 7 of the bill, which allocates the additional GST revenue approved in FY 2009 to the General Fund. The Chapter understands that the decision to allocate GST was based on avoiding a budget shortfall. The Chapter also recognizes that this action is typically executed in such circumstances. Nevertheless, we think that there is a direct nexus between vehicle registration fees and highway infrastructure.

Following the FY 2009 increase in the GST, the State missed an opportunity to make a better investment. Had the State allocated the GST funds to the State Highway Fund, the State would have been able to secure favorable terms for infrastructure projects as well as putting Nevadans back to work. The State should take this opportunity to let Governmental Services Tax revenue flow to the State Highway Fund. Despite testimony to the contrary, the State Highway Fund is not healthy, given the \$661 million backlog in preservation needs. The State has had to delay several preservation requirements to fund major projects.

This bill will send more than \$60 million a year to the General Fund that the Nevada Chapter believes should go to the State Highway Fund. This is the rationale for the Nevada Chapter's opposition to the bill.

Senate Committee on Revenue and Economic Development
March 26, 2015
Page 12

Chair Roberson:

The hearing on S.B. 483 is closed and the meeting is adjourned at 4:11 p.m.

RESPECTFULLY SUBMITTED:

Tony Rivano,
Committee Secretary

APPROVED BY:

Senator Michael Roberson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 252	C	24	Legal Division	Work Session Document