

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

**Seventy-Ninth Session
June 5, 2017**

The Committee on Taxation was called to order by Chair Dina Neal at 12:08 p.m. on Monday, June 5, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Lesley E. Cohen
Assemblyman Edgar Flores
Assemblyman Jason Frierson
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblyman Keith Pickard
Assemblywoman Ellen B. Spiegel

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Julia Ratti, Senate District No. 13
Senator Aaron D. Ford, Senate District No. 11



STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Tina Nguyen, Committee Manager
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Nick Vander Poel, representing City of Fernley
Dagny Stapleton, Deputy Director, Nevada Association of Counties
Riana Durrett, Executive Director, Nevada Dispensary Association
Lesley Pittman, representing American Federation for Children

Chair Neal:

[Roll was taken and Committee rules and protocol were reviewed.] We are going to hear Senate Bill 487 (2nd Reprint) first. Senator Ratti is not here yet, so Mr. Nakamoto will give a technical overview for the members so you can ask questions. Senator Ratti will go over the key points once she arrives.

Michael Nakamoto, Deputy Fiscal Analyst:

My role here today is to provide an overview of S.B. Bill 487 (R2). As with all Legislative Counsel Bureau (LCB) staff, we are nonpartisan and not advocating for or against the bill. All of you have S.B. 487 (R2) in front of you. It is also online in the Nevada Electronic Legislative Information System (NELIS), for people who may wish to follow along. I am not going to go through the bill section by section. I will give an overview to point out what the lay of the land is right now with respect to the taxation of marijuana.

As all of you are aware, the voters approved Question No. 2 at the November 2016 General Election, which provides for a 15 percent wholesale tax on the fair market value of marijuana that is sold or transferred by a cultivation facility. Also under current law, there are taxes that apply to medical marijuana. There is a 2 percent tax on the cultivation facilities at wholesale, a 2 percent tax that applies to the production facilities that produce edibles and various products, and a 2 percent tax at retail on medical marijuana establishments. The provisions of S.B. 487 (R2) would eliminate those 2 percent taxes on medical marijuana at those steps, and instead put a 15 percent tax at wholesale at the cultivation facility. The proceeds from that tax, less administrative costs, would go to the State Distributive School Account (DSA), thereby lining up the taxation at wholesale between the medical and recreational facilities.

The other provisions of S.B. 487 (R2) include the transfer of the administration of the establishment program, with respect to medical marijuana establishments, from the Division of Public and Behavioral Health (DPBH) of the Department of Health and Human Services to the Department of Taxation. Under the provisions of S.B. 487 (R2), the Department of Taxation would be responsible for administering both the recreational and medical establishments. The licensing for the medical marijuana cards—the patient cards—would stay with the DPBH.

There are additional provisions in the bill for a 10 percent retail excise tax for recreational marijuana with provisions in S.B. 487 (R2) for this tax going to the Rainy Day Fund [Account to Stabilize the Operation of the State Government]. There are additional provisions with respect to local licensing of marijuana establishments. Cities, counties, and towns are allowed to establish their own license fees with respect to these establishments. The amount of the license fee, however, cannot exceed 3 percent of the establishment's annual gross revenue. They are allowed to levy that license fee either as a flat fee or as a sliding scale based on those gross receipts, but in no instance can that fee exceed 3 percent.

Finally, there are additional provisions that would authorize the Department of Taxation to establish additional medical marijuana licenses in a city that is located in a county whose population is less than 100,000. All of the cities in the smaller counties in the state may be eligible to receive at least one additional establishment license, with other licenses potentially available for cultivators and production facilities. I am happy to answer any questions the Committee may have.

Chair Neal:

[Senator Ratti arrived during Mr. Nakamoto's overview of S.B. 487 (R2).] Welcome Senator Ratti. Clearly this is a fast-paced hearing today. To bring you into the loop, Mr. Nakamoto was giving an overview of the bill. You can add your comments, then I will open the hearing for questions. I will open the hearing on S.B. 487 (R2).

Senate Bill 487 (2nd Reprint): Revises provisions relating to sales of marijuana and related products. (BDR 32-818)

Senator Julia Ratti, Senate District No. 13:

What he said.

Chair Neal:

Members, do you have any questions?

Assemblyman Kramer:

I would like clarification of one paragraph on the record. I am looking at section 30, subsection 4, where it addresses medical marijuana establishments that are not medical marijuana dispensaries. Paragraph (a) says there will be at least one cultivation facility and one facility for the production of edible marijuana products or marijuana-infused products in

each county, and paragraph (b) talks about determining the appropriate number of additional such establishments in each county as are necessary to serve and supply the medical marijuana dispensaries to which the Department has granted medical marijuana establishment registration certificates, and issuing such a number of medical marijuana establishment registration certificates for such establishment in each county. It is my understanding that this is not based on the number of medical marijuana dispensaries in that county, but it is based on the statewide need for such registration certificates. Is that correct?

Senator Ratti:

I appreciate Assemblyman Kramer for bringing his question to us in advance. We were able to sit down with legal counsel. I was also in that meeting, and I agree that is the intent.

Assemblyman Pickard:

My understanding was that some of the other states that have done this have suggested if we tax above 28 percent to 32 percent, depending upon the state and their computations, we continue to encourage the black market. As I view this, in the larger counties where we are taxing at 15 percent on wholesale, 10 percent on excise, 3 percent at cultivation, 3 percent at production, and 3 percent at the dispensary, we end up a little north of 30 percent. I want to get on the record that it is everyone's opinion here that this number is not going to exacerbate the problem with respect to the black market.

Senator Ratti:

In the testimony we heard on the record in the Senate Committee on Revenue and Economic Development, the number was between 33 percent and 35 percent. This puts us in the ballpark with the best estimates we are able to make. It is a model. In that model it is assumed that every step of production—so the 3 percent that could be applied at cultivation, 3 percent that could be applied at production, and 3 percent that would be applied at the dispensary—would all be passed on 100 percent to consumers. It is actually a false assumption. That is typically not what happens in the market place, but we took it to that level so that is how that works.

The other piece I would note is it is an up to 3 percent cap. While there are some jurisdictions in the south that have gotten to that place, most of the jurisdictions across the state are nowhere near 3 percent. They will have decisions they need to make about how much they want to push to the upper edge of that number, and if they want to attract cultivation or attract production, which some jurisdictions see as the more attractive portion of the industry, they may choose to not enact the full 3 percent business license fee. There are some variables. If everybody that was able to apply a tax and/or a fee maxed out every amount they were able to get, it puts us in that ballpark.

Assemblyman Pickard:

I appreciate that information. That is how I understood it as well. I just wanted to get that on the record. The reason for my concern, coming from Clark County, is we are probably the largest consumer of the black market product. We acknowledge that Clark County is probably going to run that cap up to the maximum, and that is where we are going to see the biggest problem.

The other thing I wanted to explore on the record is that Question No. 2 established the 15 percent number. The other downstream taxes were not really contemplated, at least expressly, in the question. Can you confirm that the expectation is that this is going to pass muster if challenged?

Senator Ratti:

We did a thorough review and, obviously, it is our belief that the Legislative Counsel Bureau will not draft a bill that they do not believe passes legal muster. I think it makes sense at some point in the future to take another look at it. Going back to the black market number, the black market number at this point is relatively speculative. There is not enough data to really know what that is. I think as the comfort level with legal recreational marijuana changes over time, similar to what happened with prohibition and alcohol, you will probably see some of that as well. First we need to note that number is speculative with the information we have today and, second, we need to note that yes, that is how we moved forward.

Assemblywoman Bustamante Adams:

I understand that proceeds from the 10 percent retail tax would go into the Rainy Day Fund. I thought I heard something different. Is that what your intent is?

Senator Ratti:

There was a simple amendment very recently. All it did was change the designation of the funding from going into the DSA to the Rainy Day Fund.

Assemblywoman Bustamante Adams:

What is the estimated amount?

Senator Ratti:

The original projections in the Governor's *Executive Budget* were somewhere around \$70 million. Mr. Reel may be able to give you an updated projection. I am not sure. I know that number came down a little bit. I want to say it was in the \$65 million ballpark, but it is going to be close. Again, I really like the idea of this funding source for the full two years going into the Rainy Day Fund because we have excellent fiscal staff who do amazing work on projections. This is a brand-new industry, and we really do not know. To have no budget and no services dependent on that money, and having it go to fill the Rainy Day Fund, I think is good fiscal policy.

Assemblywoman Bustamante Adams:

Is it for only two years, and then after two years it stops going into the Rainy Day Fund?

Senator Ratti:

There is no sunset in the bill. Clearly, with our legislative duties, once we see how much we have filled up the Rainy Day Fund by next session, and it is time to allocate it to other priorities, that will be our discretion.

Assemblywoman Bustamante Adams:

For local government, in a previous hearing I had heard 5 percent, but now it is 3 percent. Is that correct?

Senator Ratti:

The cap on the business license fees?

Assemblywoman Bustamante Adams:

Yes.

Senator Ratti:

Correct. Perhaps a little bit more to add there, oftentimes when the 5 percent cap was discussed folks were thinking primarily about the retail level. What we had to really work through is, how does that work for local government if you can do up to 5 percent on a dispensary, but you cannot do anything on a cultivation or a production facility. If a jurisdiction does not have any dispensaries but does have cultivation, they are not receiving any benefit from the industry. You cannot afford to do 5 percent, 5 percent, 5 percent, or you get to the problem Assemblyman Pickard alluded to—the black market number gets too high. Three percent was the place we felt was the sweet spot, regardless of what type of industry was in a particular community. You could benefit from some of that revenue and be able to meet the impact of that industry on the county without pushing that black market number up too high.

Assemblywoman Cohen:

We have heard from the industry about having to keep, for instance, the plants separate between the recreational and the medical. Is this getting rid of that model for them?

Senator Ratti:

That is exactly what the streamlined-parallel system does. There are two important pieces to that. You have to have the same taxation structure. In this case it is 15 percent at the wholesale level, nothing at production, and then the 10 percent excise. Where you can deviate is at the retail level. What that allows for is that the plants can be grown, and the business does not have to decide at that point if it is a medical plant or a recreational plant. It is a plant. The same thing happens through the production phase—whether it becomes a lotion or some other product. It can be either recreational or medical. When it gets to point of retail, then the 10 percent excise tax is applied and the product can become either medical or recreational. What is important is we are creating that delta between

the cost of recreational and the cost of medical. We are keeping the cost lower for the medical patient. That is basically what it does. In my opinion, it is also very good for the Department of Taxation. It allows bureaucracy to not have to grow quite so large, and it means it is more efficient. We are getting more resources out to the state's needs.

Assemblywoman Cohen:

Do we know how much that is benefiting the industry as far as the savings they are going to see now that they do not have to barcode the plants, and everything that goes along with it?

Senator Ratti:

It is actually not about helping the industry, though certainly, they are happy about it. It is far more about making sure that the medical marijuana efforts survive. It is tenuous. If there is more market pressure to go toward recreational—more demand for recreational—then there is less incentive for producers to stay in the medical market. If you give them the flexibility that the product can stay in either the medical or recreational stream until point of sale, it does not matter anymore. You can keep those lower prices intact for medical. I hope that makes sense.

Assemblywoman Cohen:

Just for the record, I was not trying to imply we were doing this to benefit the industry, certainly, but whenever we do benefit industry, I like to have it on the record.

Chair Neal:

Are there any additional questions from the members? [There were none.] Before you leave Senator Ratti, I want to thank you for keeping me in the loop.

Senator Ratti:

I appreciate your partnership as well.

Chair Neal:

Is there anyone speaking in support of S.B. 487 (R2)? [There was no one.] I will now take testimony from those who are neutral on S.B. 487 (R2).

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:

We are here in neutral, even though we support 99-plus percent of this bill. We want to thank Senator Ratti for her hard work on this effort and for bringing this bill forward. We have had numerous meetings with members of the League, the industry, and the sponsors of the bill that led to the language regarding the city's right to regulate marijuana businesses within their city limits. However, we are not in agreement with what we believe is the first ever cap imposed on what a city can charge for a business license. I wanted to put on the record this should not be considered precedent setting.

Nick Vander Poel, representing City of Fernley:

Ditto to Mr. Henderson's remarks. I also want to put on the record—we really appreciate Senator Ratti and Senator Segerblom for working with the City of Fernley. They came early on in the session, lifted their moratorium as it related to medical marijuana, and now the City of Fernley was able to go to the state and put forth an application. They will hopefully be able to have a festive ribbon cutting for a future dispensary.

Dagny Stapleton, Deputy Director, Nevada Association of Counties:

We are neutral on the bill. As Mr. Henderson said, a lot of thought and discussion went into the language in this bill. Senator Ratti was really great. She worked with us every step of the way. She took our input into consideration and was willing to always communicate with us. We wanted to thank you for that.

Riana Durrett, Executive Director, Nevada Dispensary Association:

We wanted to echo the gratitude to the legislators and regulators who have looked at the other states and found out what did and did not work for them and made sure that in Nevada we can get this right and preserve our medical marijuana program.

Chair Neal:

Is there anyone else speaking neutral on S.B. 487 (R2)? [There was no one.] I will now take testimony from those who are speaking in opposition to S.B. 487 (R2). [There was no one.] Senator Ratti, do you have any closing remarks?

Senator Ratti:

I have one quick comment. I am sensitive to the needs of local government. I think very highly of our local government folks and want to make sure we are meeting their needs. I want to put on the record that it is not my intent to set any precedent in terms of capping local business license fees. This is an unusual situation in this particular case, having to be conscious of a black market. I do not think that happens in most business license settings.

We did take a quick look at the way business license fees are set across the different jurisdictions. The highest business license fee we found was 1 percent, so we did at least cap it three times higher than the highest we could find. That was for alcohol business licenses in southern Nevada. I am grateful for everyone's participation.

Chair Neal:

I will close the hearing on S.B. 487 (R2) and open the hearing on Senate Bill 555.

Senate Bill 555: Authorizes the issuance of an additional amount of credits against the modified business tax for taxpayers who donate money to a scholarship organization. (BDR 32-1248)

Senator Aaron D. Ford, Senate District No. 11:

I will keep this very brief. I am here today to present Senate Bill 555, on behalf of my co-sponsors—Senator Michael Roberson, Assemblyman Jason Frierson, and Assemblyman Paul Anderson.

With Senate Bill 555 we are adding \$20 million in one shot for tax credit opportunities to the Opportunity Scholarship Program from 2015 [Nevada Educational Choice Scholarship Program, Assembly Bill 165 of the 78th Session] for this year. There will be no growth on the \$20 million, and it will go until it is depleted. I am happy to answer any questions.

Assemblywoman Bustamante Adams:

You are adding the \$20 million. There is no growth, and it is one shot. If a parent applies for the scholarship on behalf of their child, there is no expectation we would continue beyond the one shot. Is that correct? They would be able to send their child for one school year and would then have to figure out what to do after that since it is a one shot. Is that correct?

Senator Ford:

The one-shot reference I am referring to is the one-shot of \$20 million to the program, not the one shot relative to a parent who can apply. I want to make sure we are using the terminology correctly.

Assemblywoman Bustamante Adams:

Once the money runs out, then it is gone, correct?

Senator Ford:

Yes.

Assemblywoman Bustamante Adams:

Then it reverts back to the \$5 million that we appropriated.

Senator Ford:

There is growth at the base level already. I believe at this time we are appropriating a little over \$6 million per year in the biennium. Next year that base will continue to grow. I forget the percentage number under the Opportunity Scholarship Program, but the \$20 million tax credit will not have a growth percentage associated with it.

Chair Neal:

Mr. Nakamoto has something to offer on that point.

Michael Nakamoto, Deputy Fiscal Analyst:

Senator Ford is correct, there is an escalator in the program. Under the Economic Forum's forecast from May 1, 2017, under current law, the forecast for fiscal year (FY) 2018 is \$6,500,000 for the tax credits for this program, and for FY 2019, with the 10 percent escalator, it is \$6,655,000. If S.B. 555 were to be enacted, the FY 2018 amount would go to \$26,500,000 million, but the FY 2019 amount would stay at the \$6,655,000.

Assemblywoman Bustamante Adams:

On the website for the scholarship, they do have some tracking information—the number of students that apply and the income level. I know it does discuss how many individuals are of different ethnicities that apply. Is there any other additional reporting information that we are able to gather?

Senator Ford:

This bill does nothing to the Opportunity Scholarship Program substantively. The only thing it does is add \$20 million in one shot. Everything else remains exactly the same.

Chair Neal:

Members, are there any additional questions? [There were none.] I will open the hearing to those in support of S.B. 555.

Lesley Pittman, representing American Federation for Children:

We are in full support of S.B. 555, which through the additional funding for the Education Choice Opportunity Scholarship Program will provide many more children in Nevada an opportunity to attend a school that is the best fit for them.

We want to express our appreciation to the leaders in both houses and in both caucuses for working diligently to come to some sort of resolution that does expand school choice programs here in Nevada. We know it has been difficult.

The American Federation for Children will continue to work diligently to make certain Nevada's business community is aware of the modified business tax credits available, so they can provide scholarship funds to parents who are in search of an education program best suited to their child's individual needs. While we, and more than 10,000 parents, were disappointed that the Nevada's Education Savings Account (ESA) program was not funded this session, this boost to the Opportunity Scholarship Tax Credit Program is a step in the right direction to expanding education choice in our state.

Chair Neal:

Is there anyone else speaking in support of S.B. 555? [There was no one.] I will now take testimony from those who are in opposition to S.B. 555. [There was no one.] I will now take testimony from those who are neutral on S.B. 555. [There was no one.] I will close the hearing on S.B. 555.

We will now have a work session on these two bills to move them out of Committee. I will open the work session on Senate Bill 487 (2nd Reprint).

Senate Bill 487 (2nd Reprint): Revises provisions relating to sales of marijuana and related products. (BDR 32-818)

Chair Neal:

I will entertain a motion to do pass Senate Bill 487 (2nd Reprint).

ASSEMBLYWOMAN BUSTAMANTE ADAMS MOVED TO DO PASS
SENATE BILL 487 (2ND REPRINT).

ASSEMBLYMAN PICKARD SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN KRAMER AND
MARCHANT VOTED NO. ASSEMBLYMAN FLORES WAS ABSENT
FOR THE VOTE.)

I will assign the floor statement to Assemblyman Paul Anderson. I will close the work session on S.B. 487 (2R) and open the work session on Senate Bill 555.

Senate Bill 555: Authorizes the issuance of an additional amount of credits against the modified business tax for taxpayers who donate money to a scholarship organization. (BDR 32-1248)

Chair Neal:

I will entertain a motion to do pass Senate Bill 555.

ASSEMBLYMAN PAUL ANDERSON MOVED TO DO PASS
SENATE BILL 555.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMAN FLORES WAS ABSENT
FOR THE VOTE.)

I will assign the floor statement to Assemblyman Marchant. Assemblyman Frierson requested the floor statements be changed. Assemblywoman Cohen will be assigned the floor statement for Senate Bill 487 (2nd Reprint) and Assemblyman Paul Anderson will be assigned the floor statement for S.B. 555. I will close the work session on S.B. 555.

Is there anyone here today for public comment? [There was no one.] I will close public comment.

Michael Nakamoto, Deputy Fiscal Analyst:

Before the Committee members leave today, in the event this is the last meeting we have, you are free to take your binders with you. I would also like to take a personal privilege to thank everyone. It has been a pleasure to work with all of you, and I am glad we have gotten through it.

Chair Neal:

There being no further business, we are in recess [at 12:39 p.m.] until the call of the Chair. [The meeting was adjourned at 11:59 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.