

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

**Seventy-Ninth Session
March 28, 2017**

The Committee on Taxation was called to order by Chair Dina Neal at 4:05 p.m. on Tuesday, March 28, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)
Assemblyman Jason Frierson (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Robin L. Titus, Assembly District No. 38

STAFF MEMBERS PRESENT:

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



OTHERS PRESENT:

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General,
for Adam Paul Laxalt, Attorney General
Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and
Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General
Samuel P. McMullen, representing Altria Client Services Limited Liability Company;
and Phillip Morris USA
Alfredo Alonso, representing Lewis Roca Rothgerber Christie Limited Liability
Partnership
Michael Hackett, representing Nevada Tobacco Prevention Coalition, and
Nevada Public Health Association
William C. Horne, representing Ryo of Nevada Association, Incorporated; and
Vegas Brothers
Martin I. Melendrez, representing Ryo of Nevada Association, Incorporated; and
Vegas Brothers
Daphne Hooper, City Manager, City of Fernley
Joshua J. Hicks, representing City of Fernley
Nick Vander Poel, representing City of Fernley
Roy Edgington, Mayor, City of Fernley
Dana Uhlhorn, Private Citizen, Fernley, Nevada
Joshua Anderson, Private Citizen, Fernley, Nevada
William Shattuck, Private Citizen, Fernley, Nevada
Mary C. Walker, representing Carson City, Douglas County, Lyon County,
and Storey County
Jeff Page, County Manager, Lyon County
Rich Harvey, Fire Chief, Central Lyon County Fire Protection District
Wendy Lang, Human Resources Director, Douglas County
Jeff Fontaine, Executive Director, Nevada Association of Counties

Chair Neal:

[Roll was taken and Committee rules and protocol were reviewed.] The first order of business today will be a presentation from the Office of the Attorney General, to get a better understanding of the Tobacco Master Settlement Agreement (MSA), and then we will hear Assembly Bill 62 and Assembly Bill 311.

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General, for
Adam Paul Laxalt, Attorney General:**

I am here on behalf of Nevada Attorney General Adam Laxalt. We are here today to present Assembly Bill 62 and to provide a brief overview of the MSA. With me today is Supervising Senior Deputy Attorney General Hillary Bunker, who oversees the Tobacco Enforcement Unit within the Business and Taxation Division of the Office of the Attorney General. Assembly Bill 62 would amend various provisions in Nevada law which regulate the manufacture and sale of tobacco products in Nevada, but once again, by way of brief introduction, we are going to provide you an overview.

In 1998 Nevada entered into the MSA, which resolved health-related lawsuits between the nation's largest tobacco manufacturers and 52 U.S. states and territories. In exchange for the receipt of annual MSA payments, the State of Nevada must demonstrate diligence in the regulation and enforcement of the manufacture and sale of tobacco products in our state. We have provided some exhibits: a letter sent back in February gives you an overview of the prefiled bill ([Exhibit C](#)); we subsequently submitted some additional amendments ([Exhibit D](#)) that Ms. Bunker will take you through; a second letter ([Exhibit E](#)) provides an overview of those proposed amendments, along with the amendments themselves; and the brief PowerPoint presentation gives an overview of the MSA ([Exhibit F](#)) that Ms. Bunker is going to take you through. I will turn it over to Ms. Bunker to provide you further background on the MSA and then take you through the particulars of the bill.

Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General:

As Mr. Kandt mentioned, in 1998 Nevada entered into the MSA, which resolved the health-related lawsuits between the nation's largest tobacco manufacturers and 52 U.S. states and territories. Under the MSA, participating tobacco manufacturers make tobacco payments to the State of Nevada of approximately \$40 million each year. These annual tobacco payments go to the Fund for a Healthy Nevada and the Governor Guinn Millennium Scholarship Program. Receipt of future tobacco payments is vital to the continued existence of both of these important programs.

The cornerstone of both Chapters 370 and 370A of *Nevada Revised Statutes* is the requirement that cigarette manufacturers either sign the MSA and make MSA annual payments, or, if a manufacturer does not sign the MSA, that manufacturer is required to deposit escrow funds into an escrow account. These escrow funds are intended to provide a source of recovery in the event Nevada prevails in a future health-related lawsuit. I will now go through a brief overview of the MSA.

Several states sued major tobacco companies in the late 1990s to recover Medicaid costs and other damages related to health care. In 1998, 46 states, Washington, D.C., 5 territories, and the various tobacco companies signed the MSA. The question I get asked most frequently is, When does the MSA end? It does not. There is no end date. There is no sunset provision. There is never a time that the MSA will end [slide 2, ([Exhibit F](#))].

The terms of the MSA and the main overall components were the restrictions placed on tobacco companies focusing on youth smoking. They were prohibited from targeting youth, using cartoons, and limitations were placed on brand-name sponsorship at events popular with youth. There were overall advertising and sponsorship limitations for outdoor advertising of cigarettes, brand-name sponsorship, and general tobacco brand-name merchandise, and bans on free samples of cigarettes. In return, states that signed the MSA agreed to release the tobacco manufacturers from specified claims that the state might have

had at that time, or in the future, for health-care costs arising out of tobacco-related illnesses. Individuals are still permitted to file suit against tobacco companies, and the tobacco companies make yearly payments to the signatory states [slide 3, ([Exhibit F](#))].

The original participating manufacturers to the MSA were Philip Morris, R.J. Reynolds, Lorillard, and Brown and Williamson. Since the 1998 signing, more than 40 other manufacturers have also signed the MSA [slide 4, ([Exhibit F](#))]. Nevada receives a 0.6 percent allocable share of the MSA, and as I mentioned this is roughly \$40 million every year. Per statute, 40 percent of this money goes to fund the Millennium Scholarship Program and 60 percent goes to the Fund for a Healthy Nevada. There are other costs associated with enforcement of the MSA, which are also taken out of our annual payment [slide 5, ([Exhibit F](#))].

There are many tobacco companies that are not parties to the MSA, and these companies are referred to as nonparticipating manufacturers. They do not make annual payments to the state through the MSA, but their activity is regulated by statute. They are required to track their cigarettes sales and make escrow deposits each quarter. The escrow deposits are left in bank accounts that are returned to the tobacco company at the end of 25 years, unless Nevada obtains a judgment against the company, in which case monies can be released to the state [slide 6, ([Exhibit F](#))].

Recent and ongoing arbitration between the states and tobacco companies has reinforced that the states must diligently enforce the terms of the MSA. If a state is found to have not diligently enforced the MSA, it may lose up to its entire MSA payment for the year in question. Diligent enforcement is not defined, but factors include how well the Attorney General's Office works with their revenue departments on tobacco-related issues—if there are reliable accounting figures from wholesalers, importers, and manufacturers allocating resources to enforcement, enacting legislation, and working with the National Association of Attorneys General, among other things [slide 7, ([Exhibit F](#))].

The Tobacco Enforcement Unit in the Attorney General's Office is responsible for enforcing the MSA and making sure all tobacco companies active in our state follow all policies, regulations, and laws. We also oversee the youth compliance program for Nevada, where undercover stings are performed to see if tobacco sales will be made to underage youth, and we regularly work with and represent the Department of Taxation on tobacco-related issues. Again, ensuring accurate reporting of numbers, we operate as a checks and balances system with the figures the Department receives and the figures that we receive. We perform background checks for businesses wishing to operate in the state and we represent the Department on appeals of ceased products [slide 8, ([Exhibit F](#))]. My contact information is on slide 9 ([Exhibit F](#)). I am in the Reno office. That concludes my presentation, so I will get into testimony on A.B. 62 unless anyone has questions at this time.

Assemblywoman Spiegel:

Does the MSA only cover cigarettes, or does it cover other tobacco products, such as loose tobacco that someone might roll into their own cigarettes, pipe tobacco, chewing tobacco—other forms?

Hillary Bunker:

The MSA covers cigarettes and what is considered roll-your-own loose tobacco.

Assemblywoman Spiegel:

Does it cover products that are derived from tobacco, such as nicotine that might be put into vaping technology?

Hillary Bunker:

It does not include any sort of e-cigarettes or e-liquid or anything like that. Payments are made on cigarettes or the loose cigarette tobacco.

Assemblywoman Bustamante Adams:

On slide 4 ([Exhibit F](#)), I recognize the manufacturers Philip Morris and R.J. Reynolds. The other two [Lorillard and Brown & Williamson], what are their brand products?

Hillary Bunker:

Philip Morris and R.J. Reynolds, those are the last two companies that were original signatories. Lorillard and Brown and Williamson are no longer in existence.

Assemblywoman Bustamante Adams:

On slide 5 ([Exhibit F](#)) you talked about 40 percent going to the Millennium Scholarship Program and 60 percent going to the Fund for a Healthy Nevada. In totality, how much have we contributed so far?

Hillary Bunker:

I could not give you a firm figure, but it would have started in April 1999. According to that, we are going to get our payment this next month. Like I said, it is roughly \$40 million each year. It has occasionally been a couple million higher than that, and I think only a couple times has it been a couple million lower, but it has always been that 40-60 split. That is something I could run by the Office of the Treasurer since we only have a two-way split in Nevada.

Assemblywoman Bustamante Adams:

The other costs associated with the enforcement, does that come out of the \$40 million? How is that handled?

Hillary Bunker:

That comes out of the \$40 million. What is also included as other enforcement would be partial funding for the Deputy Attorneys General at the Attorney General's Office and the work in the Tobacco Enforcement Unit. There are also three positions within the Department of Taxation that are funded by the tobacco money because they do tobacco work.

Chair Neal:

Are there any additional questions? Seeing none, I will now open the hearing on A.B. 62.

Assembly Bill 62: Revises provisions relating to the supervision of manufacturers and wholesale dealers of tobacco products. (BDR 32-390)

Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General:

As you are aware, each legislative session the Office of the Attorney General submits a bill related to tobacco enforcement. Our office is tasked with diligent enforcement of the Master Settlement Agreement (MSA). The consequences of not diligently enforcing—which is determined on an annual, ongoing basis—and not having strong enforcement statutes, are that the entire MSA payment Nevada receives is put in jeopardy.

Following signature of the MSA in 1998, the tobacco companies arbitrated against the states to determine if they had been diligent in their enforcement efforts. As a result of this arbitration, Nevada entered into a separate settlement agreement with 23 other states and various tobacco manufacturers concerning our diligent enforcement for calendar years 2003 through 2014. By entering into this settlement agreement, the state did not have to participate in arbitration proceedings to determine its diligence for the years covered. However, this is only for the years that I mentioned, and as there is no sunset provision on the MSA, the question of diligence has to be determined each and every calendar year.

Although the term "diligent enforcement" is not defined in the MSA, one of the factors considered in determining diligent enforcement is whether a state enacted legislation toward strengthening its enforcement efforts. Accordingly, it is necessary for the state to continually increase its enforcement efforts and ensure that our statutes are amended for the strongest enforcement of tobacco entities operating in the state.

As discussed, Nevada is a party to a settlement agreement with 23 other states and various tobacco manufacturing companies. As a term of this settlement, the parties will be exchanging documents with each other and submitting them to a data clearinghouse. Many of the necessary statutes are already in place to comply with the terms of the agreement; however, there are a few areas that this bill seeks to revise based on ongoing negotiation.

Sections 1, 2, and 10 of this bill allow the agencies involved in collecting this information to share it, as required under the settlement agreement, with a court, arbitrator, data clearinghouse, or counsel for the tobacco companies. These sections also ensure that

information provided and received is treated as confidential. Section 2 authorizes the inspection of facilities for those applicants applying for tobacco licenses in this state. This has always been done in practice, but will now be expressly authorized by statute.

Section 3 changes the reporting for tobacco sold, transferred, or shipped into the state. *Nevada Revised Statutes* (NRS) 370.327 is amended to specifically detail what form to use, what tobacco products have to be reported, and in what format, and what shipping information is required. This also permits the Attorney General's Office to use the information found on these reports to compare and contrast with reports filed in other states, as well as share the information with the federal government to determine compliance in cigarette and loose tobacco reporting. This section also clarifies that if a manufacturer does not provide the information requested, tobacco importers will be held liable for the reports. In order to sell tobacco products in the state, nonparticipating manufacturers (NPMs) are required to comply with reporting requirements and provide accurate statements regarding their conduct, not only in Nevada, but in all states. Section 8 amends NRS 370.698 to give the state the authority to exclude a tobacco manufacturer from selling products if there are substantial discrepancies in the information and data presented.

Currently under NRS 370.682, certain NPMs are required to post a bond before they can sell tobacco products in the state. Section 5 of this bill amends NRS 370.682 to require the posting of a bond by all NPMs, to ensure the state has recourse in the event escrow payments are not made. Sections 5 and 6 further clarify that wholesale dealers and importers are jointly and severally liable for escrow payments due over the amount of the bond, and that the Attorney General's Office shall adopt regulations to carry out the provisions of this section.

Section 9 directs the use of monies assigned to the state under NRS 370A.153. At present, any money assigned to the state is deposited into the State General Fund by default under NRS 353.249. With this amendment, the State General Fund will still receive the money, but through a clearly defined statutory process.

Section 7 broadens the scope of what information the Department of Taxation can provide to the Attorney General's Office, or other agencies, for compliance with tobacco laws, as well as what information the Attorney General's Office can request from manufacturers or wholesale dealers. Section 4 also permits the Attorney General's Office to request additional information regarding escrow payments due as our office monitors these accounts. The remaining sections do not contain substantive proposals, but make conforming amendments to comport with the amendments detailed above.

As has been mentioned, we are requesting an amendment to this bill ([Exhibit D](#)). Section 1 is being amended to remove reference to a subsection that has been removed. Section 2 is being amended to remove a subsection that references public records, which conflicts with general laws regarding tax document filings in NRS Chapter 360. This section also

clarifies that the confidential records received by the Nevada Tax Commission, Department of Taxation, or Attorney General's Office shall not be disclosed or produced by these entities.

Section 3 is amended so that it can be moved into a different area of NRS Chapter 370, and overall adds in the terms "roll-your-own tobacco" and "smokeless tobacco," so that information on all these types of tobacco can be obtained. This section is also amended to remove a grammatical error and clarifies that data received can be shared to aggregate data only.

The amendment in section 4 removes language that appears elsewhere, specifically in section 3. The amendment in section 9 removes language that is redundant for assignment of escrow monies to the state. Section 10 adds in an additional section to NRS Chapter 370, to clarify that the records being referenced are confidential.

The other amendments include changing two sections of NRS Chapter 370 to require retention of records for five years, to be consistent with other retention requirements, and removing modifiers from the description of "brand family." We are also clarifying the vending machine operator licensing requirements. Currently under Nevada law, a "cigarette vending machine operator" is defined as anyone who has a retail license to sell tobacco products via a vending machine. However, there needs to be further clarification that this is a separate type of license which the state will issue. Our last amendment clarifies that tobacco licenses are issued to a specific location, consistent with NRS 370.100, NRS 370.120, and NRS 370.130. That concludes our testimony on our bill and amendments.

Chair Neal:

We will take this by section. We will start with sections 1, 2, and 3. Are there any questions from the Committee on section 1? [There was no response.] In section 1 of your amendment [page 1, ([Exhibit D](#))], you struck out the disclosure of information pursuant to subsection 2, in which NRS 370.257 allowed discretion to share records. I need to understand what the deletion of that means, and where you are adding language. It is in blue and red. Help me understand this part of the bill. Are we taking the discretion out and now making it an absolute? What is happening?

Hillary Bunker:

Section 1 is a reference to NRS 360.255, which is the Department of Taxation's records, and notes the information provided to the Department of Taxation is to be confidential and privileged, except in the exceptions discussed below. What we are doing in section 1, subsection 1, paragraph (k) is noting that under our settlement agreement, we have to be able to potentially provide taxpayer information to a data clearinghouse and to an arbitrator pursuant to either the MSA or a separate settlement agreement. What we are doing in paragraph (k) is noting that much like in paragraphs (a) through (j), there are exceptions to the general rule of all information provided to the Department of Taxation being confidential and privileged because it has to be provided to, at a minimum, the data clearinghouse to aggregate data.

As to your question on section 1, subsections 2 and 3—subsection 3 has been removed in our amendment from NRS 370.257, so we have taken out a reference to that in section 1, subsection 1, paragraph (k), because it no longer exists.

Assemblywoman Bustamante Adams:

I want to make sure I understand. The agencies involved in collecting information must share. Are they required to have an agreement on how they are collecting the data? Do all agencies have to pick one way to do it? Could you not do it through a court, or through an arbitrator? Is there an agreement on which one of those possibilities will be used?

Hillary Bunker:

Currently, with this separate settlement agreement that I have referenced, we are operating under a 2012 term sheet. As I mentioned, there are 23 other states and multiple tobacco companies, so the final settlement agreement is still being negotiated. That is why the language is in there with the expectation that there will be a data clearinghouse picked with a request for proposal that goes out. There are some states that may have issues, or we are anticipating if down the line it was something we needed a court order for, or could not produce documents for some reason to a data clearinghouse, that we have an arbitrator set up, or a court, or a data clearinghouse. There will be a procedure in place under this separate settlement agreement.

Assemblywoman Bustamante Adams:

Thank you for clarifying that.

Chair Neal:

Are there any questions from the Committee on section 2? [There were none.] Are there any questions from the Committee on section 3? [There was no response.] In section 3 of your amendment [page 2, ([Exhibit D](#))], you added in "roll-your-own tobacco, or smokeless tobacco," and then I see you struck out "has mailed, shipped." Why did you add in "roll-your-own tobacco, or smokeless tobacco"? Did you need to note the manner of how things were being moved?

Hillary Bunker:

What we are doing in this section is allowing either an importer or a nonparticipating manufacturer (NPM) to submit reports on what type of tobacco products they are shipping into the state. Currently there is a very similar federal report that should be filed by the entities, and their definition of cigarettes encompasses roll-your-own tobacco and smokeless tobacco. It is just a different definition than we have. As I mentioned, roll-your-own tobacco is included under the MSA, and we are including smokeless tobacco with the intention that a NPM or an importer could submit its federal report and certify that it is capturing the same information that the state is asking for and not have to submit a second report. We are mirroring the federal language in those provisions.

Chair Neal:

Currently the roll-your-own tobacco folks are not included in the report. They are already included under the MSA but with the reporting mechanism, is this an additional burden that is now attached to them because now they have to collect data on what they are doing?

Hillary Bunker:

If they are operating in compliance with federal law, they would be providing this information to the state already under their federal reporting requirements. Part of the reason we added this is because there are certain restrictions on what you can use the federal reports for, just because it is under federal law. The intention is to be able to have a very similar state report that we could use for enforcement purposes that does not contain the same restrictions as the federal report does.

Assemblywoman Bustamante Adams:

My question is futuristic. If at some point new technology allows for vaping products to be considered as "other tobacco products," how would that affect this, if at all?

Hillary Bunker:

If they were considered "other tobacco products," it still would not impact this. Currently under "other tobacco products," cigars are listed, and that is not something we have reported. There are currently other tobacco products that are not being reported in the same fashion as these are.

Assemblywoman Bustamante Adams:

I know this is information so we can understand it better, but will this information be used at all for health purposes, or is this strictly just for capturing appropriate taxation and enforcing?

Hillary Bunker:

The intention would be to capture for taxation, escrow purposes, and compliance. If it were ever something that the Department of Health and Human Services, or another health agency, requested information on, then we could see what we could compile as far as data for them.

Chair Neal:

On your amendment [page 2, ([Exhibit D](#))] I would like you to clarify where it says "Page 7." Underneath "Page 7" in subparagraph (3), there is red language that you added, but it does not look like it is associated with the bars that are the deletion. I will not ask you why you did not use the standard purple and green, but this is confusing. Also clarify in section 3, are you adding the language "A person is not required to submit the report . . ."? Clarify this section because it is really hard to read. I do not know what your red language means. Is it new language?

Hillary Bunker:

Yes, the red would be new language. Essentially what subsection 3 has done is clean up the federal report I was referring to, which is under *United States Code*, Title 15, Section 375, a report that if you are operating in compliance with federal law, you would already be submitting. What we have done there is allow any tobacco entities to submit that to the state and certify that it is complete and accurate, and permit the state to treat it as the report we are requesting.

Chair Neal:

So the federal law is actually making it more burdensome. It looked like under the original language they did not have to list the name, address, or phone number of the person delivering the shipment to the recipient; they just had the name of the person to whom the delivery sale was made.

Hillary Bunker:

I do not have 15 U.S.C. § 375 in front of me, but I do not believe the state has made the requirement more burdensome because the intention was to capture the same data, so any tobacco entity could provide its federal report and certify it to the state as requesting the same information the state was. There would be no way for us to have added more requirements because then no one could certify their federal report was complete and accurate if we had additional requirements. It may have just been a matter of edits to our language versus what was currently in the federal report.

Chair Neal

On page 3 ([Exhibit D](#)) of your amendment, referring to page 7 of the bill, section 3, subsection 6, which is line 15 of the amendment, it is talking about the manufacturer. What is the definition of a "nonparticipating manufacturer"?

Hillary Bunker:

Those who signed on to the MSA in 1998 would be considered the original participating manufacturers. The other 40 or so tobacco companies that signed on to the MSA are considered subsequent participating manufacturers. There are numerous tobacco companies that never signed the MSA, so they do not make payments to the state. They do not pay Nevada the \$40 million. They do not pay any states any money, and all of those tobacco companies that are not signatories to the MSA are "nonparticipating manufacturers."

Chair Neal:

Can you give us more information about what the monthly operational reports are? It is adding a lot because now you want the subsequent corresponding form and all adjustments, changes, and amendments to such reports. What do the monthly operational reports encompass?

Hillary Bunker:

These are, again, federal reports that the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury would require. It is three separate forms essentially showing that the manufacturer is actually manufacturing. I can get you specifics, or I can get you copies of the form.

Chair Neal:

On page 3 of the amendment ([Exhibit D](#)), referencing page 8 of the bill, section 3, subsection 7, are there any questions from the Committee on that added language? [There was no response.] You have "The Attorney General may share any information . . . ," so I am assuming the blue language is from the original bill. Was it permissive language about sharing the information with the Department of Taxation, or is this a new adjustment where now you are saying you may share information with them, or was it automatic before?

Hillary Bunker:

This is a new section where we are explicitly saying we could share the information received under this section that is referenced, which I believe is currently NRS 370.327, with the Department of Taxation or the Nevada Tax Commission, taxing authority, or a law enforcement agency in another state. We are just specifying. There are provisions in NRS Chapter 370 that allow for the Department of Taxation or the Attorney General's Office to provide that information. We are just clarifying that it also encompasses information that would be received in this section.

Assemblyman Pickard:

I want to confirm that it includes any of the proprietary information. All information can be transmitted.

Hillary Bunker:

By proprietary information, do you mean in terms of ingredients in cigarettes?

Assemblyman Pickard:

In looking at the second amendment to subsection 4, it led me to believe that we were talking about potential proprietary information that we would not want public. I am assuming that this authorization does not limit the information to nonproprietary, but all information could be transmitted if necessary.

Hillary Bunker:

I believe I understand your question. That would be correct, as you explained. Certainly what companies are shipping into a state or any sort of pricing, especially in wholesale pricing, would not be something they would want disclosed to other manufacturers.

Chair Neal:

You have not amended section 5 of the bill. You have just changed the amount of the bond. Can you explain the increase in the amount of the bond now required into the escrow?

Hillary Bunker:

This is something we are changing currently under Nevada law. A bond is required for new NPMs that come into the state or for anyone who may have not paid escrow, either in Nevada or in another state, and that bond was set at \$25,000. We requested the bond be increased to either \$50,000 or the largest required escrow amount due, and this would be for all NPMs. The reason is that our biggest quarter from 2016, from one NPM, was over \$500,000 owed in escrow—so one quarter, one tobacco company. If something happened to that tobacco company—they filed bankruptcy, the cigarettes were already in the state and stamped, and they walked away from it—the state would have considerable issues in terms of meeting its compliance if they could not collect escrow. We had that situation happen at the end of 2016 with a NPM that filed for bankruptcy. We have been working with the National Association of Attorneys General (NAAG) because once a bankruptcy is initiated there is a stay on the case. Luckily, in that case, it has been a small amount of escrow owed, and NAAG has worked with us and other states to ensure that escrow payments are being made to the states. With the example of an actual case happening, it costs us to review what some of the larger companies are, and as mentioned, if we are looking at over \$500,000 in escrow owed for one quarter, if a company walks away from that, then that is going to dramatically hurt us in any sort of diligent enforcement.

Chair Neal:

Thank you for that explanation. Does the Committee have any questions on sections 6 or 7? [There were none.] Does the Committee have questions on section 8? [There was no response.] This is once again reporting language, dealing with the calendar year. We will skip down to section 9. Is section 9 in relation to what we were just talking about, where you are doing the "assignment executed"? Can you give us some more examples so we can understand the real-life interplay of section 9, subsection 2?

Hillary Bunker:

Yes. What we have here is "assignment," and we have already experienced that twice in about the last year and a half. This would be where a tobacco company walks away from its business. They say they are done, they are not going to sell cigarettes anymore, and they are not going to manufacture cigarettes. The NPMs need to have set up escrow accounts, and again, these accounts have to be maintained by the companies for 25 years. In a situation where they are done manufacturing cigarettes, we have been able to reach out and have one assignment that went to the State General Fund from a tobacco company, and that one has closed down already because they generally do not want to continue paying bank fees for 25 years. That one was assigned to us. We have another one that is set with multiple states, that we will receive in 2035, and that one is substantially more, and that money will actually be assigned to us.

As I mentioned in my testimony, currently by default we give the money to the State General Fund because it is money that is not assigned or dictated to go anywhere else. By default we assign it there. All this will do is actually clarify that if the state receives an assignment, it is to be deposited into the State General Fund. It essentially cleans up what we have been doing in practice, so we do not have to rely on a default statute.

Chair Neal:

Does the Committee have questions on that section? [There were none.] In section 10 you added NRS 370.327, which is a reflection of what?

Hillary Bunker:

I know we are getting into the weeds on confidentiality, and hopefully we are not stepping all over ourselves here, but NRS 239.010 is the public records request statute, and as you can see here, there are hundreds of statutes that essentially take the records received out of the public records statute. What we are doing is clarifying, again, that although we clarified in NRS Chapter 370 that these records were to be confidential, we are also clarifying it in the public records section that these two tobacco sections in NRS Chapter 370 simply fall under an exception, much like the hundreds of other statutes that do not allow for these records to be disclosed.

Chair Neal:

So that concludes the bill. Does anyone have questions now that you have a better picture of the total bill?

Assemblyman Pickard:

It seems to me that this is an issue of essentially cleaning up the existing statutory scheme, to conform to existing practice. Is that a fair assessment?

Hillary Bunker:

I would say that is the majority of what the bill does. As I mentioned, this is an ongoing, never-ending task. I would expect every session that either the Attorney General's Office or the Department of Taxation, or both, will have tobacco bills. We are constantly challenging our own enforcement and seeing what we need to do to strengthen our enforcement efforts. As the MSA does not end, every year is going to be a new challenge for diligent enforcement. We are constantly updating our statutes.

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General,
for Adam Paul Laxalt, Attorney General:**

This is a real challenge. It is almost a moving target. We have one opportunity every two years when the Legislature is in session to make any necessary amendments to existing Nevada law, to continually demonstrate our diligent enforcement in order to comply with the MSA and the related settlement agreement, and ensure that those tobacco payments our state receives are not jeopardized. Our office appreciates the patience the Legislature and your staff have in working with us to ensure the necessary amendments are made to Nevada law.

Chair Neal:

We appreciate your time and effort in walking us through the amendment. I will now call up those in support of Assembly Bill 62.

**Samuel P. McMullen, representing Altria Client Services Limited Liability Company;
and Phillip Morris USA:**

I would like first to say we truly appreciate the work every session and every interim with the Attorney General's Office, which has the issue of being as farsighted as they can be for the purposes of changing the law and making sure we never jeopardize the MSA, which Philip Morris and other participating manufacturers agreed to years back as a way of settling up litigation. It is a huge amount of money, and these generally go to the heart of the provisions that relate to NPM or other procedural items. They are really hard to understand. It is a very arcane area. I have to get re-educated on it every time I come in here.

We really truly appreciate the Attorney General's Office working through these things. There are attorneys who understand these things, either for Altria or as third-party attorneys who represent and counsel them. The Attorney General's Office talked to those people months before and got their input. They did what they needed to do to accommodate and draft this so it is mutually acceptable. I have a written statement I will read ([Exhibit G](#)). Because it is a specific area, I want to make sure I read it so it is clear.

I am offering testimony today on behalf of Altria Client Services Limited Liability Company and Philip Morris USA regarding this bill. First, Philip Morris supports the provision of this legislation that will allow the Attorney General to share certain records with a data clearinghouse established for the purpose of making calculations required by the MSA and related settlement agreements. Second, Philip Morris supports the provision that will require all NPMs to post a bond approved by the Attorney General for the benefit of the State of Nevada. As they told you, and I will try to cut pieces out of this that you probably already got the explanation on, the thing that stands out for me is that Nevada is receiving \$40 million per year under the MSA, so it is a serious exercise.

Nevada, together with 23 other states, settled its disputes with the tobacco companies that participate in the MSA over the application of the NPM adjustment for a number of years, up to and including 2014. Under that settlement, Nevada received substantial additional payments that had been disputed by the tobacco companies. Again, I really want to compliment the Attorney General's Office because they have a specific responsibility to be diligent about the collection from NPMs and other parties, not just Philip Morris and all the people who agreed to it and do it pro forma. It is a very big exercise and it is very important.

Section 2 of A.B. 62 includes a provision that will allow the Attorney General to share such information with the data clearinghouse and the attorneys who appear before the data clearinghouse on behalf of a party to the settlement. We note that there will be strict confidentiality protections put in place to ensure the information Nevada provides under that provision would be used only for the purposes of performing calculations. There are some things, as I am sure you understood in that presentation, where there is a lot of interchange of data and calculations that are critically important to all the management of exactly who owes what, so we want to make sure that is all facilitated for anybody who needs to do it from the state level.

Another provision we support, which is in section 5 of A.B. 62, requires all nonparticipating manufacturers to post a bond for the benefit of Nevada. Requiring them to post bond will give Nevada an additional enforcement tool to help ensure they do not gain an unfair competitive advantage over the MSA-participating manufacturers, and also as Ms. Bunker said, there are reasons why the state needs that information as well and wants to make sure that they have the full benefit.

For those reasons we support A.B. 62 and the amendments. I would be happy to answer any questions. Again, thank you for your patience. This is, as I use the word, an "arcane" area that is very important to Nevada, so thank you very much.

Chair Neal:

Thank you for your testimony. Are there any questions for Mr. McMullen? [There were none.]

Alfredo Alonso, representing Lewis Roca Rothgerber Christie Limited Liability Partnership:

We echo many of Mr. McMullen's remarks. The NPM portion in this world is a moving target, so we commend the Attorney General's Office in always trying to be a little bit ahead of the game. It is very difficult. I think they do a great job and I think Ms. Bunker defines the word diligent, to say the least. We are obviously in support, and we will continue to be in support of any efforts to continue to crack down on those who come into the state and attempt to sell cigarettes in a manner in which the state does not get its portion. Obviously, the reporting requirements in the other sections are very important as well.

Michael Hackett, representing Nevada Tobacco Prevention Coalition, and Nevada Public Health Association:

We recognize this is not a tobacco control or public health policy bill. Both organizations want to be on record in support of the bill and of the amendment ([Exhibit D](#)) that has been proposed by the Attorney General's Office. Simply, we feel A.B. 62 improves enforcement and accountability through the Attorney General's Office, and it ensures continued compliance for the state when it comes to receiving and administering tobacco MSA funds, as has already been identified by the proponents of the bill.

Chair Neal:

Thank you for your testimony. I will now take testimony from those who are neutral on A.B. 62. I believe there is someone in Las Vegas, and here in Carson City.

William C. Horne, representing Ryo of Nevada Association, Incorporated, and Vegas Brothers:

We are here today to give testimony in the neutral position. We submitted a conceptual amendment ([Exhibit H](#)) for A.B. 62. It is on the Nevada Electronic Legislative Information System and it basically changes definitions in NRS 370.014, the "cigarette rolling machine" definition, and in NRS 370.0315, the definition of "manufacturer." My clients, and similar tobacco shop owners, small-business owners in Nevada, sell loose-leaf tobacco,

and also limited liability companies (LLCs) of which several are owners, have a club in which you have to be sponsored to become a member. They have cigarette rolling machines that basically roll no more than 20 cigarettes per minute. This is for their personal use. It is not for resale. They do not charge for its use. It is just a benefit for those members in their club, or the owners of that LLC.

Currently in statute, they are not permitted to do so. Martin Melendrez is in Las Vegas, and he is counsel for the two shops I represent. He can answer questions of more technical detail on what this proposed amendment will do. Basically, it is to permit the small shops that have members who buy loose-leaf tobacco and want to roll their own cigarettes to be able to do so—not for resale, making money, or anything like that. I am happy to answer any questions.

Chair Neal:

I know the amendment was uploaded ([Exhibit H](#)). Was it uploaded without finding out if you had talked to the Attorney General's Office about the amendment?

William Horne:

Yes, I did contact the Attorney General's Office. I was told no opposition or support. I was informed that they were probably going to maintain their current position on this. Mr. Melendrez can testify to an ongoing litigation between these shop owners and the Attorney General's Office, but this amendment is prospective in nature, and I do not believe it would affect any ongoing litigation.

Chair Neal:

Thank you for clarifying that. Mr. Melendrez, could you add some further explanation to what the amendment does?

Martin I. Melendrez, representing Ryo of Nevada Association, Incorporated, and Vegas Brothers:

This adds some clarification to an amendment that was adopted, I believe in 2015 [[Assembly Bill 83 of the 78th Session](#)], to give the individuals—one is a club and one is a LLC. The LLC actually has several locations—it is several LLCs, and the members are able to use the machines. The club is a nonprofit club. What they do is their members are sponsored in, and they get to use the machine. The amendment essentially attempted to outlaw the actual machine. As far as the litigation, it is ongoing currently with the Attorney General's Office. There is a disagreement as to what personal consumption means and how it is defined. What has happened here is these machines do not compete with big tobacco.

These machines, like Mr. Horne commented, roll about 20 cigarettes per minute. I know the large manufacturing machines out there roll several thousand per minute so it just further clarifies the exemption that is out there, as far as personal use, and that is what is happening here. It is for personal consumption.

Assemblywoman Bustamante Adams:

Did you mention in your statement one is a "nonprofit club"?

Martin Melendrez:

Yes. Ryo of Nevada Association, Incorporated, is a nonprofit recreational club. That is one of the entities.

Assemblywoman Bustamante Adams:

What does that mean? Do you not pay dues or fees, and you come and roll the tobacco? Forgive me, I am not familiar with how this works.

Martin Melendrez:

Essentially, it is a recreational club that was properly formed, and they have their nonprofit status. How it works is if you want to be a member, you enjoy smoking, and you enjoy smoking tobacco you roll yourself, they are able to do that at this club.

Assemblywoman Bustamante Adams:

Do you call it a nonprofit because you do not charge these customers?

Martin Melendrez:

That is correct. What happens is there is a business where they purchase the tobacco, and at the same facility the machines are there, or they can purchase the tobacco from a different entity. Likewise, for clarification, if someone can prove to the facility they have properly paid for their loose tobacco and the rolling tubes—because there are taxes paid on the wholesale purchase of that loose tobacco and the tubes to make the cigarettes, those are taxed wholesale by the entity—they can use the machines. That entity that sells tobacco is a different business. They sell the loose-leaf tobacco to the individuals and then the individuals can either take the tobacco home and roll it at home, or use it there. Again, if they come in with their own loose-leaf tobacco, and they have all the proper documentation showing they paid what they were supposed to as far as taxes on that tobacco, they can use the machines if they are a member.

Assemblyman Pickard:

I am trying to understand how this works in practice. I was under the impression that tobacco was taxed at both the wholesale and retail levels. It sounds like in this instance they are paying tax only at the wholesale level. I would assume these club members are apparently purchasing a relatively large quantity in order to get wholesale price. Relative to what you would see in a pack, and per your amendment ([Exhibit H](#)), they roll their own up to 30 cigarettes per minute. What I do not understand is, are we trying to develop a body of laws that are generally applicable to make sure an individual would not go in and buy ten times what he could consume himself, roll the whole thing, then turn around and sell it to his friends for less than what they would pay per pack? This is what I am surmising is the purpose of this inclusion. How is it that we avoid that under your scenario?

Martin Melendrez:

That is a very good question. I think the concern here would be on the club and the other one, which are LLCs, to understand that typically they are not going in there and purchasing ten packs of cigarettes. I think the typical purchase is a carton of cigarettes, which individuals buy for themselves. You are correct. There is nothing in that amendment that would limit that. I think that could be handled with the *Nevada Administrative Code* (NAC), something in an administrative code the Department of Taxation could provide.

Assemblyman Pickard:

Are you suggesting we allow the club and the individuals to police themselves, to not try to achieve a monetary advantage for doing this? Would this be purely on their good faith?

Martin Melendrez:

I think that could be one, but I also think the NAC could be revised in a fashion to provide some limitations on how many cigarettes you are actually going to sell somebody if you are using these types of machines.

Assemblyman Pickard:

If you are selling them, does that not make you a NPM?

Martin Melendrez:

Not for personal consumption.

Assemblyman Pickard:

Does it not always end up personally consumed? Do you see where I am going? You are trying to exempt yourself from the NPM position, yet it sounds like within the club you are allowed to sell it to each other. As I see it, that kind of defeats the purpose, does it not?

Martin Melendrez:

I would disagree. Within the club they are not selling to anybody. The club is purely to be able to use the machine, and that is what they do. They use the machine for themselves, for their own cigarettes.

Assemblywoman Spiegel:

My question revolves around the whole concept of the club being recreational. To me, if it is recreational, and it is because people like to roll their own cigarettes, then they would be taking more than two seconds to roll one. I am wondering how you came up with "30 per minute?" I can understand somebody in a recreational capacity using a machine, but 30 per minute seems pretty automated to me. Could you explain where the "30 per minute" came from, and also expand on whether there are any statutes like this in any other state, and if so, which states?

Martin Melendrez:

I do not know if there are any other states. This came on pretty quickly with regard to what we are trying to do. The answer to that question is, I do not know if there are any other states that permit this. With regard to the number, it was a number we felt was appropriate given that these machines do not operate in a high capacity. They do not do thousands of cigarettes per minute. To constitute someone who is out there making thousands of cigarettes per minute with a machine, we feel that would compete with the tobacco industry. What these machines do are amounts that are personal in nature. We feel that 30 cigarettes, or in this case what the machines are doing is about 15 to 20, is appropriate to show they are not out there making thousands and thousands of cigarettes per minute.

Assemblyman Flores:

Can you procedurally walk me through this one more time. I go to location "A" and become a member. You do not charge me to be member. If I do not bring any tobacco with me, how do I roll my cigarettes in that scenario? I remember you mentioning somebody there can provide me with the tobacco.

Martin Melendrez:

You can purchase the loose-leaf tobacco and the tubes from the facility.

Assemblyman Flores:

With that purchase, I am paying my tax on that?

Martin Melendrez:

Yes. You are taxed for that purchase.

Assemblyman Flores:

Is there a scenario where the 30 cigarettes per minute can become an issue because outside your club, in a different world, somebody is rolling cigarettes specifically for the purpose of selling them? In other words, are there other shops?

Martin Melendrez:

I do not know the answer to that question whether this is happening as far as someone going in and rolling packs of cigarettes at these facilities, or any other facility, and then going out and selling them to other individuals. It probably is a valid concern.

Chair Neal:

I think we have muddled the water a lot with "neutral." We will take two more questions and close neutral testimony.

Assemblyman Kramer:

Here is the way I understand it. It used to be that you could buy loose-leaf tobacco and roll your own cigarettes. You could buy it and the tax on loose-leaf tobacco was measured differently than the tax on rolled tobacco, but there was still a component in there that tried to approximate what the actual tax would be on a package of cigarettes. It did save the

consumer a little bit of money to roll his own. As I understand it, years ago these machines were out there and you had stores that would sell the loose-leaf tobacco and have the machine handy for anyone to use. They could roll their own and take them home, and this would be, in a sense, buying cigarettes cheaper than if they went someplace else. It was ruled you cannot do this. You cannot have that machine there, so it was taken that people would, as a club or a nonprofit, buy a machine and have it colocated so they could benefit the same way. Then in the last session, the definition was made so you could not do that either. Now you are coming back with an amendment to define that machine, "30 or more cigarettes per minutes." If it is less than that, we can have it on site. If it is more than that, then it falls under the restrictions that are out there now.

I see it as if you are buying loose-leaf tobacco and rolling your own, that is legal. What you are trying to do is say it is okay for them to have a machine to use. They own it cooperatively, or it was bought by a store and donated to this nonprofit group so that members could use it without charge, yet it does not belong to the store that is trying to sell the loose-leaf tobacco. Taxes are paid. You can bring your own tobacco from someplace else. It seems like a go-around on the stopping of the store providing loose-leaf tobacco and the machine that would roll your own. Am I too far off the mark on that, going back in history?

Martin Melendrez:

I think that is certainly one way to look at it.

William Horne:

I would say this proposed clarification is a public policy clarification in that what we are trying to do is define what these machines are. Who are we going to define as using for personal use? Looking at the big scheme of things, what are we trying to achieve by prohibiting individual users from using the machine in a store, in a club, to roll their personal tobacco? What are we trying to prevent? The sale of the tobacco has already been made. The taxes have already been paid on it. They are not trying to get out of paying into the Master Settlement Agreement (MSA). What are we trying to achieve here?

The only thing that is being achieved here is preventing these individual users from utilizing a machine, for free, in these clubs or in these stores to roll their own tobacco. We have not seen those who may come in, roll a bunch of cigarettes, and then go out on the street corner and sell them. I believe this proposed amendment is simply to say we recognize the small-business owner and individual users who choose to buy loose-leaf tobacco, letting them have the liberty to be able to conveniently roll their cigarettes, instead of doing it one at a time with their own hands.

Assemblyman Pickard:

Thank you for that clarification. Ultimately, I am sympathetic to the idea, particularly as Assemblyman Kramer mentioned, if there is a way to save a buck or two. We all look for ways to save money. My concern is merely the potential for misuse. If it is doing 20 cigarettes per minute, there are 60 minutes in an hour and 24 hours in a day.

That is 28,800 cigarettes in a 24-hour period that machine could produce. We are talking about the potential for thousands. Although they would never compete with big tobacco, that is not the point. As I see it, the policy that exists currently is that we do not allow for significant manufacturing, in that being more than personal use, and I think 28,800 cigarettes is beyond any personal use level unless they are putting together a year's supply.

My question is what can we do to make sure that, for the entrepreneur among the club members who sees an opportunity—even though it may not be a significant problem currently under the present law—we are not inviting misuse with this exception? How do we avoid that if we were to adopt this amendment?

William Horne:

I believe if it does not already exist, you could have severe penalties for a shop owner who would do that, who would run their machine 24/7, making these cigarettes to sell. If that occurred, you could have penalties and loss of license in those scenarios. Like I said, I do not know of any evidence of any shop owner, prior to these machines being shut down in 2015, who was doing that. The scenario you paint would not be for personal use. That would be a shop owner making thousands of cigarettes for sale, and that is not for personal use. We are talking about you being able to go into a store, buy your loose-leaf tobacco, and being able to utilize that machine in a sensible manner.

Chair Neal:

Thank you for this discussion. I will now take testimony from those who are speaking in opposition to A.B. 62. Seeing no one, I would like the Attorney General's Office to come back to the table for closing remarks.

Hillary Bunker:

I would like to add some comments on the amendment. As you may be aware, last session you passed Assembly Bill 83 of the 78th Session, which added the definition of "cigarette rolling machine," as well as defined anyone who owned, operated, or permitted someone else to operate these machines, as a manufacturer. Since then, a few stores have closed down and the majority of the stores kept operating. As Mr. Melendrez mentioned, there is ongoing litigation, both in the Eighth Judicial District Court down in Las Vegas, as well as administratively before an administrative law judge with the Department of Taxation. I cannot speak on everything that is currently going on.

Essentially, the issues we see, and why our office put forward the bill in 2015, are because these people are operating as manufacturers. What they are doing is they are avoiding the state excise tax on cigarettes, the federal excise tax on cigarettes, licensing, and any other requirement that a manufacturer would have to comply with. In addition to the licensing and tax requirements, you also have an escrow requirement. These people are obviously not signatories to the MSA, and as such they should be depositing escrow for the cigarettes sold. To the extent that anyone who is arguing these are social clubs that are closed, we have had Attorney General's Office investigators go undercover and buy cigarettes at all of the locations, and they were not members of the clubs. They were permitted to come in

off the street and roll cigarettes on their own. Cigarettes are generally advertised at \$28 per carton, which is 10 packs of cigarettes, so you are looking at \$2.80 per pack. Currently the state excise tax for cigarettes is \$1.80 per pack. You add in escrow at roughly \$6, which is \$24 alone right there, without paying any federal excise tax on it.

I think Assemblyman Kramer commented accurately on exactly what happened, which was in 2012 the federal government changed its laws to say these are commercial-grade machines, and you have to become licensed as a manufacturer, just as you would if you were making cigarettes in any other capacity. Nevada was one of the last states to change its laws in 2015. To the extent that it is a personal consumption issue, there is an exception for anyone who is using a noncommercial-grade machine. If you are hand rolling, using a table-top roller, or anything like that, that is not going to get you into the manufacturer exception.

I have not seen the amendment being brought forward ([Exhibit H](#)), but I immediately question any sort of threshold requirement and potentially having the Department of Taxation auditors or investigators go out to review what the machines are rolling or how frequently or if the machines are even capable of rolling less than their full potential, much less having the Attorney General's Office go out and constantly be policing these stores. Those are my only comments on the amendment, and unless anyone has any questions, that is all I have.

Chair Neal:

Are there any questions from the Committee? [There were none.] If they have investigated all these places, does that include the person who testified?

Hillary Bunker:

Mr. Melendrez?

Chair Neal:

Yes.

Hillary Bunker:

He is counsel for eight of the stores. To my knowledge, Mr. Melendrez is not an owner and is just representing them.

Martin Melendrez:

That is correct. If I may comment, I would appreciate it. If not, I understand.

Chair Neal:

No. We are not going to go back and forth. If you have any written comments, I will take them for the Committee to consider. I will close the hearing on A.B. 62 and open the hearing on Assembly Bill 311.

Assembly Bill 311: Revises provisions governing allocation and distribution of proceeds of certain taxes to local governments. (BDR 32-647)

Assemblywoman Robin L. Titus, Assembly District No. 38:

Today I present to you Assembly Bill 311. This bill is before you today at the request of the City of Fernley. Following the 2015 Session, the City of Fernley approached me and requested this bill. The City of Fernley's only bill draft request was withdrawn following the November election, when the voters turned down an advisory question regarding increasing taxes for certain services. They will address that during their presentation.

Before I turn the presentation over to the City of Fernley, I would like to acknowledge that several of the entities testifying for and against the bill are in my district. No one ever said this was going to be easy.

Despite years of discussion and litigation, there has been no resolution in what this bill will address, the Consolidated Tax Distribution (CTX). I hope A.B. 311 helps to offer a solution. I will now ask the City of Fernley and their representatives to give their presentation, to address A.B. 311, including some background on the CTX.

Daphne Hooper, City Manager, City of Fernley:

I would like to thank Assemblywoman Titus and the cosponsor, Senator Settlemeyer, for sponsoring this bill. Would you like me to run through the entire presentation and take questions after? I will leave that up to your discretion.

Chair Neal:

Do your presentation and we will ask questions after.

Daphne Hooper:

With me today is our City Treasurer, Denise Lewis, and in the audience I have Mayor Roy Edgington. We have Capitol Partners representatives here, as well as Josh Hicks, our attorney of record.

Fernley is about 30 miles east of Reno. Our population is about 19,368 citizens. Our projected population by 2021 is 30,000. Families represent 75.1 percent of our population, which is higher than average, and our median age is 34.8, which is lower than average. The total area of the city is about 160 square miles [slide 3, ([Exhibit I](#))].

Fernley was incorporated in 2001. In 2001 the population of Fernley was 6,800. The population has essentially tripled since that time due to development in the region, along with the Tahoe Reno Industrial Center (TRIC). There is still a big need for workforce housing. I am sure Fernley is not the only place for that. It is a big concern [slide 4, ([Exhibit I](#))].

Fernley is a full city. We provide all of the city-provided services with the exception of law enforcement and fire. We provide public works and utilities, including streets, storm drains, water, and wastewater. We provide community development, including planning, building and code enforcement, and economic development. We do provide parks and recreation services. While we do not have an official recreation program, we work collaboratively with our local youth organizations and have a recreation component through that. We have a city attorney, city clerk, animal control, city treasurer, municipal court, and general administration functions. Lyon County does provide law enforcement for our city, and the North Lyon County Fire Protection District provides fire protection [slide 5, [\(Exhibit I\)](#)].

We all know CTX was implemented in 1997 and distributes six different taxes: cigarette tax, liquor tax, basic city-county relief tax, supplemental city-county relief tax, real property transfer tax, and governmental services tax. The first tier is allocated to the 17 counties and the second tier is distributed to local governments and special districts [slide 7, [\(Exhibit I\)](#)].

Each entity receives a base allocation that was established in 1997. The challenge for us is Fernley was not incorporated in 1997. Fernley was incorporated in 2001 after that distribution was calculated. There is an inequity for Fernley about the amount it gets compared with other cities [slide 8, [\(Exhibit I\)](#)].

Right now there is no flexibility in the current statute that allows for the adjustment. One of the requirements listed in statute requires a police department. This is a challenge for the city. How do you establish a police department when you only get \$150,000 in CTX to get the adjustment that is needed? That is the biggest challenge we face [slide 9, [\(Exhibit I\)](#)].

We took a couple of cities to show you a comparison [slide 12, [\(Exhibit I\)](#)]. These are 2013 numbers and are not much different now. As you can see, the population basis for Fernley, Mesquite, and Elko are essentially the same. You can see the growth in Fernley was more than the other cities over time, but the base distributions for each of those cities are substantially different. That is the challenge we face in terms of providing the services needed in our community.

The estimated taxable sales for the City of Fernley for fiscal year (FY) 2014 and FY 2015 are on slide 13 [\(Exhibit I\)](#). One of the challenges is we have been trying to understand how much revenue is actually generated within the City of Fernley. We have been trying for several years to get those numbers specifically for the city, and last year we were able to with the help of Assemblyman Wheeler. He was able to help us get some numbers from 2014 and 2015. These showed the taxable sales for Lyon County and Fernley. As you can see, there is quite a bit of volume of taxable sales that occur within Fernley. It is about 20 percent of the total taxable sales within the county. When you compare that with the amount of CTX we receive, we get less than 1 percent of the entire CTX that comes into the county, about \$150,000 per year.

Slide 14 ([Exhibit I](#)) shows the CTX amount received by Lyon County. It is about \$14 million to \$15 million. On slide 15 ([Exhibit I](#)) you will see the city of Yerington in red on the top of the chart. They are close to \$400,000. The City of Fernley is in the green, at the bottom of the chart, and is at about \$150,000.

The biggest question for our residents is, why is it that they are worth about \$7 per person [slide 16, ([Exhibit I](#))] as a resident of this great state? We understand the formula is challenging and outdated, but we need to figure out how to address those needs. It really prevents the City of Fernley from providing the necessary services now and growing into the future.

Chair Neal:

Before you go into the next slide, could you explain how you got to your current service level? When you became incorporated, there was a requirement to accept a certain amount of services and you guys did not, correct?

Daphne Hooper:

We provide all of the services that a city requires, except for police and fire. When the city was incorporated, there was an agreement between the Lyon County and the City of Fernley that the County would provide law enforcement services. As far as the fire district, the fire district is a completely separate entity than even the county. They have their own fire district within our city. When the city was incorporated, the area the North Lyon Fire Protection District services goes to the north of the city about four miles. There is a piece that is still in the county. The rest of the boundary of the fire district is the same as the city. At that time, there was a law passed that the fire protection district would stay a separate entity and not be absorbed into the city.

Chair Neal:

I just wanted to make it clear for the Committee that when Fernley became incorporated, Chapter 360 of *Nevada Revised Statutes* (NRS) required you to provide a certain level of services in order to get a certain amount of CTX. You are doing less than those services, so that is why you do not get the full amount. I wanted to make sure the Committee was clear on that point. We can now move on to all of the things you guys did to try to adjust the CTX amount.

Assemblyman Pickard:

I would like you to clarify a statement you made. You said you entered into an interlocal agreement with Lyon County for police services.

Daphne Hooper:

My understanding is that there was an agreement made between the County and the city, that the county would provide law enforcement.

Assemblyman Pickard:

I find that interesting. Unlike most cases, we have a very good recitation of what happened in the Nevada Supreme Court case [*City of Fernley v. State, Dep't of Tax*, 132 Nev. Adv. Op. 4, 366 P.3d 699 (2016)] where it is stated, "After its incorporation, Fernley neither entered into an interlocal agreement with Lyon County, nor did Fernley create or assume public services." [Page 7, ([Exhibit J](#))] I think that is something we need to get clarification on. They rule later that if there were an interlocal agreement, then that would suffice. That is a really important point of clarification we are going to need.

Chair Neal:

I know we need to talk about this, but let us get through the presentation and fixes, then we will get into the nitty-gritty.

Daphne Hooper:

Josh Hicks, who is our attorney of record, will be able to address that. Continuing on with the presentation, let us go back to what we have tried [slide 18, ([Exhibit I](#))]. We have approached the Legislature a couple of times before to address potential options for the city. We have had some discussions with Lyon County. We did seek relief through the courts. In 2016 we initiated the City of Fernley Advisory Question that was sent out to the citizens, asking if they would be interested in the city going to the Legislature to potentially be able to have this tax that would ultimately stay within the City of Fernley. That question failed. There were 45.49 percent of the votes in favor [slide 19, ([Exhibit I](#))].

Part of the challenge that our citizens face is that they feel like they are getting double-taxed. They feel they already get taxed to receive the services, so why do they have to pay again? That was part of the struggle with getting the initiative passed. That is when we approached Assemblywoman Titus to help us with this bill.

Where are we now? Again, we run a general fund budget of about \$6 million to \$7 million annually. It is challenging operating a city and completing the infrastructure, providing the staffing needs, road improvements, parks improvements, and other infrastructure needs. Fernley's location is prime property for potential development coming in the future. Attracting new business is critical for the success of trying to employ our residents and making sure there is good growth there that we can handle, but we do need to make some improvements. We have a downtown revitalization plan we are working on. Unfortunately, we do not have funds to implement this. This happens often. We can make these great plans, but we do not have any money to move forward to get those things rolling [slide 21, ([Exhibit I](#))].

The good news is our location is great. We are right in the middle of what people are looking at for development in northern Nevada. The challenge is providing resources and infrastructure to make those things move forward. We often get the impact of the businesses going into the industrial center at TRIC, and that is great because there are big businesses there, and there are a lot of jobs there; unfortunately, there is no housing available. Those residents go to Washoe County, but many of them come to Fernley.

Housing is cheaper in Fernley, but as those folks come to live in our city, we have the impact to our streets, parks, schools, and everything else that goes along with that with no tax revenue to be able to support it, so it becomes challenging for our community [slide 22, ([Exhibit I](#))].

To address where we are going, I think it is important to know how we address growth and how we support what we have now. We struggle to maintain what we have now. We have lots of parks, open space, and roads we struggle to maintain. We just cannot keep up, and things are deteriorating. We have to figure out a way to be able to move forward [slide 24, ([Exhibit I](#))].

What we are looking for is an understanding. I think Assemblywoman Titus said it best. Here is an opportunity to have a discussion. Let us figure out what we can do, understand the seriousness of where Fernley is, and figure out a way to move forward. We would like the consideration for our citizens to get the same equal treatment as every other city does in this great state. If it is a one-time adjustment, that is helpful because as you know, those bases grow over time. As they grow with the excesses added on top of that, if you are adding 5 percent on top of that base, 5 percent of \$150,000 is sure a lot less than 5 percent of \$5 million. We see growth in \$1,000 to \$2,000 increments over each year [slide 25, ([Exhibit I](#))].

I know there is opposition in this room. I would like you to consider asking yourself, how do you maintain your roads and your parks, and serve 20,000 people in your city with \$150,000 in CTX? We are asking for some support [slide 26, ([Exhibit I](#))]. We are available for questions.

Chair Neal:

I will allow a few questions on the presentation, and then we will get into the bill. Assemblyman Pickard, would you like to ask your question again since their attorney has come to the table?

Assemblyman Pickard:

I knew about the Nevada Supreme Court case, *City of Fernley* ([Exhibit J](#)). Whenever they go through their facts, they are usually very detailed. They have laid it out so what I am trying to understand is that the city knew at the time they incorporated what the rules were going to be.

Joshua J. Hicks, representing City of Fernley:

I am with McDonald Carano. I am the outside counsel for the City of Fernley. It is true, there was evidence on the record about when Fernley incorporated and what they were told. The counter to that is circumstances change, people change, and no one really envisioned what might happen there. That could happen to any local government in the state, and it happened to Fernley when they grew pretty fast. This bill is trying to establish a process where you are not just foreclosed from seeking a CTX adjustment just because you did not

ask for it at the start, because you may not know just how far your services are going to go or your population is going to grow. You are correct, that was one of the findings of the Nevada Supreme Court. This bill is not trying to undo anything in the court decision. It is trying to establish a new process to seek an adjustment for a local government.

Assemblyman Pickard:

I understand that and I am sympathetic to the idea. I am just trying to understand. If they currently were to provide police service plus one of the other things—which they could do but have elected not to—they could meet the minimum threshold. If the city has grown to the point where these services are needed, I would think there is enough of a tax base to hire and establish a minimal police staff in order to meet the criteria. I am wondering what the obstacle is to meet the minimum criteria in order to be able to come to the table, as the law exists, without weakening or watering down the provision of the law so all any jurisdiction has to do is clean the streets and mow a lawn and you can get the CTX. That is where I am struggling.

Josh Hicks:

I think the obstacles in the current state of the law are twofold. It is not just the police department. One obstacle is the criteria. You have to have a police department before you request a CTX adjustment from the Committee on Local Government Finance (CLGF) within the Department of Taxation. That is a very expensive proposition, especially for a small city like Fernley. That could be the biggest municipal expense out there. It is a significant obstacle and is not necessarily something you can just come up with. That is part of the problem that Fernley is faced with: You have to have it in place before you can ask for it, so that is the first obstacle.

The second obstacle in the current state of the law—and this bill would also address this—is that the request for a CTX adjustment can only be made within the first year after incorporation. Even if Fernley had a police department right now, they still would not be able to apply because of that time issue. What this bill does, and I think the proposed amendment ([Exhibit K](#)) says it best, is if that is what you are looking at, it sets up two different processes. It sets up one process for the rural counties and the small cities, and then keeps the existing process in place for the bigger cities and bigger counties because they have a bigger tax base. The smaller cities and small counties do not have that. The same rule would stay in place for these bigger cities and counties where you have to have a police department, and a new rule would be put in place for the smaller ones where that could be one of the four different things they could provide, and they could also make this request at any time. It is not limited to the one year after incorporation, which effectively is very difficult. Going back to your earlier question, for a city to look into that crystal ball and see where they are going to be in 10 or 20 years, they may not know that, and they may have a legitimate need for additional tax revenue down the road. Right now they are just foreclosed from asking for it.

Assemblywoman Spiegel:

I have a question regarding the comparison of the CTX for Fernley, Mesquite, and Elko, and bringing it down to an allocation on a per capita basis [slide 12, ([Exhibit I](#))]. It really is not comparing apples to apples because Mesquite and Elko both provide police and fire. I am wondering what the total would be if you take out the expenditures Mesquite and Elko spent for police and fire, and then brought it back down to the per capita basis? Do you have that information, or could you get it to me?

Daphne Hooper:

On the document that was provided by opposition, there is a bar chart ([Exhibit L](#)) that shows public safety expenditures, but I do not have those specific numbers.

Assemblywoman Spiegel:

Could you get that to me with a reworking of the chart? I want to see it in an apples-to-apples comparison.

Assemblywoman Cohen:

You mentioned the difference in cost of living between Yerington and Fernley. Is that because of availability of housing?

Daphne Hooper:

I do not recall mentioning the cost of living between Yerington and Fernley. I think I mentioned the cost of living from Washoe County to Fernley. Washoe County is about \$100,000 more per household than Fernley.

Assemblywoman Cohen:

Tell us about the ballot initiative. What kind of outreach was done for the voters on that?

Daphne Hooper:

We had limited funds to get things going. It was a small group of citizens who did some outreach. Unfortunately, in Fernley there are limited media outlets, so it is really by word of mouth on how you get things out there. There were some outreach efforts that were done, and I think getting close to 50 percent in favor was significant for us.

Chair Neal:

Are there any additional questions? Seeing none, let us get into the proposed amendment ([Exhibit K](#)).

Josh Hicks:

I will walk you through and explain the mock-up ([Exhibit K](#)). You have heard some testimony already, and you have heard what the existing state of the law is. We have a process by which a local government or a special district can apply for a CTX adjustment to the CLGF, but it has some obstacles in it: the existence of a police department and the fact

that it has to happen within that first year of receiving CTX funds. That has really made it difficult, especially for a city like Fernley, to try to take advantage of the process. This is really a bill about process and opening this process up to be allowed.

I will walk you through some of the key points. If you look at section 1, this bifurcates two different rules, and I talked about that earlier. There is one rule, which is in section 1, subsection 1. It is for the counties, with populations under 100,000—the more rural counties. They have a special rule, and that is only if they were created after July 1, 1998. Fernley is the only city in that group right now. They have to provide at least two of the four listed services. Those are listed, and one of those is police. They are police protection; fire protection; construction, maintenance, and repair of roads; and parks and recreation. They need to fit two of those four. If they do that, you will see further in the language that they can apply at any time, after created, to the Nevada Tax Commission within the Department of Taxation to have a CTX adjustment. That takes care of the other issue I was talking about under current law, where you have just that first year to apply. You can now make an application at any point.

Section 1, subsection 2 keeps in place the existing rule on applying for CTX adjustments in counties with a population of 100,000 or more. In those counties you still have that mandatory obligation to have a police department as one of your services, and you have to provide at least two of the other listed services. Then they can apply at any time as well.

If you move on throughout section 1, there are some other changes. You will see changes that strike the word "new" and insert "requesting" before "local government." That is to make it clear that an existing local government can apply for this adjustment. It is not limited just to a new local government, which is the current state of the law.

In section 1, subsection 7 ([Exhibit K](#)), you start seeing the actual process of how this works. You go to the CLGF. Currently, if you go to the CLGF and they do not agree, assuming that you can even get to them, that is the end of it. It cannot go anywhere else. That is actually up on lines 22 through 24 [page 2, ([Exhibit K](#))]. We are proposing removing that prohibition and putting in place a process that is more similar to any kind of administratively contested case where you go and make your case to the CLGF. Other parties can participate in that as well. Other CTX recipients would likely be interested. They make a recommendation to the Nevada Tax Commission. The Nevada Tax Commission then holds a hearing on it and they can take that recommendation and adopt it, modify it, or reject it. At that point, that becomes the final decision for purposes of judicial review, and the local government that petitioned them can then take it into judicial review. It is also important to note that any other local government that feels aggrieved by that decision also has the right to judicial review. It creates a whole process where you get to make your case. That is really the result of this bill. It is about establishing a process that does not exist right now—for a local government to come in and make a case for more CTX and for other local governments that are affected to come in and make their case, either in opposition or in agreement with it. That concludes my presentation of the mock-up.

Assemblyman Pickard:

In the existing law, the city would have to meet the requirement of police protection and at least two of the other services, for a total of at least three minimum. In your amendment ([Exhibit K](#)) they only have to provide two. Is there a reason for that?

Josh Hicks:

It is not a numerical issue. It is just a recognition that the police protection piece is very difficult for the small cities to meet if they do not already have it in place. It is still in there, but it is just two of the four. I think it just came out. I think it was really just nothing other than taking police out and moving it down the list. There were three under the other list. We made it four, and I think that is how it came about.

Assemblyman Kramer:

Let me see if I understand this. You want to take the second tier of CTX and make Fernley's portion of that bigger by some amount. My understanding of CTX is that the first tier is dividing money among all the different counties and the second tier divides the money allocated to that county among the different entities in that county. Essentially, what you are saying when you want more CTX money from the second tier, is that you want a bigger share of whatever goes to Lyon County, which means you want to take away some from Lyon County and Yerington, those being the other two entities that receive CTX now.

Lyon County provides a share of your support. Are you then offering to pick up a share of support on your own, or law enforcement on your own? If you are saying that you are willing to pay for Lyon County's sheriff support in the Fernley area, then is the money you are going to receive from CTX enough to do that? I would submit that it is not as much as is spent, but I could be wrong. I just do not see how the transfer works. I do not see how Lyon County is made whole. I do not see how Yerington is made whole at all if you are pulling some from them, and they are not part of the argument. I understand you need more money, that is not a question. I see where you are coming from. I just have a hard time understanding if Lyon County is still going to provide sheriff support. You are going to take money away from them, even if you pay for sheriff support, and you are not going to pay as much as it is costing, yet you are taking money from them. I do not see the equity of taking it from Yerington and Lyon County at this point. I do not think this solves the problem.

Josh Hicks:

I think your question is getting a little bit ahead of the intent of this bill. This bill was about opening up the process for Fernley to make their case to the CLGF and the Nevada Tax Commission. What we are talking about is, can they make that case? It is a good question. What we are trying to do is have the opportunity to make the case. I think what you are getting at with Lyon County getting less—it might. Obviously that would be a big concern to Lyon County, and I would assume they would participate in that process and make their case.

The second tier two has different components to it. It has the base component and it has the excess component, and there are times when the economy in particular is doing well where that excess is coming in higher. In my opinion, that might be a good time to try to seek something. You want to get to the held-harmless piece. You try to do it in a way when revenue is coming in higher than forecasted and try to capture some of that rather than taking it out from existing revenues.

Assemblywoman Bustamante Adams:

In the proposed amendment, I know we are carving out a process for Fernley, but that could also include other entities such as Minden and Gardnerville. Are there any others that it could include besides just Fernley?

Josh Hicks:

Yes. It could include any local government in a county under 100,000.

Assemblywoman Benitez-Thompson:

I wanted to ask a little bit about the CLGF. They are obviously a group of finance professionals from all around the state; I am not familiar with what the composition of it is. It looks like they, by statute, can make recommendations to the Nevada Tax Commission. Can you tell me if we have some kind of a precedent for them to make these kinds of decisions in terms of determining where CTX goes, or other kinds of taxes?

Josh Hicks:

The CLGF already has the ability to make these kind of changes. This is already in statute. I was talking about some of the obstacles. It does not get used because those obstacles are in place. Under existing law they have the ability to make these kinds of changes to the CTX. This is not an unprecedented change. It is actually no change at all in the scope of what they can do currently. It is just about opening up the process so an existing city like Fernley can petition for that adjustment. The power to adjust is already there, and it is already set out in statute.

Chair Neal:

I have questions about section 1, subsection 6, and section 1, subsection 7, paragraph (b) of the proposed amendment ([Exhibit K](#)). You struck out the CLGF, but now you have the Nevada Tax Commission reviewing the decision for appropriateness. What is not clear is what is "appropriate," and now you look like you have created an appeal provision where if you do not like the decision, the Nevada Tax Commission can review what the CLGF has to say, but that was not in the original law. Is that correct?

Josh Hicks:

The existing law sets forth the process that a local government petitions the CLGF for an adjustment. If the CLGF determines they do not think an adjustment is appropriate, and "appropriate" is in the language that is already in statute, then that is not subject to review by the Nevada Tax Commission. That is the current state of the law. What this will do is it treats the Nevada Tax Commission as the next step in that process. The CLGF still

undertakes their review. They still do it under that existing standard of appropriateness, and then the Nevada Tax Commission makes its own recommendation on whether it is appropriate. "Appropriate" is in there because that is what is already in the statute. Whatever the Nevada Tax Commission's final decision is—whether they modify it, reject it, or approve it—that is then subject to judicial review, just like any other decision of the Nevada Tax Commission and any other final decision of an administrative agency.

Chair Neal:

What is the effect of adding the next step? If the CLGF was not able to do the step before, why do you now need the next step? Why can it not just stop at the CLGF? Why add the next level? I do not understand why we need that. Why can you not just keep the process the same?

Josh Hicks:

The answer to that is just to have a review for an aggrieved party. Right now if the CLGF says no to a request, there is no next step for relief. If you disagree with that, you have no appeal right. What we are trying to do is create an ability. If a petition goes in and that city thinks the CLGF got it wrong, they could take it to the next step—to the Nevada Tax Commission. Right now the process stops at the CLGF. If they say no, it is no. The CLGF is composed of members of a variety of different local governments. Getting back to Assemblyman Kramer's comment, the pie is only so big and most people do not want to share it. The CLGF is probably not likely to look at adjustments, so there needs to be some kind of appeal beyond that; otherwise, there is no real remedy or ability to pursue an administrative right.

Chair Neal:

Some folks are arguing that creating this new process now gives you another opportunity to stand on a different statutory provision and challenge under a general government purpose to go back to the courts and see if you can get another court decision in your favor. Do you feel that this language allows you to do that?

Josh Hicks:

It does create a right to go to the courts that does not exist right now. One thing I think is important to recognize is that going to the courts on anything is not an easy proposition, or a risk-free proposition, for a local government to take. It costs money. It costs time. If you have to hire counsel, that is going to cost you something. When you are on judicial review on a Nevada Tax Commission decision, you are under an abuse of discretion standard. It is not a *de novo* review. You already have some difficulties ahead of you. If the idea is you are just going to roll the dice and take your chances in court, that is not how the calculus works. You would be in a better position to take your best shot at getting relief from the CLGF with the Nevada Tax Commission. You could have the right to go to court if you felt aggrieved, but I do not think that is a decision most local governments would take lightly about seeking judicial review. It is also a very lengthy process and could take quite a while before you actually get any relief on it.

Chair Neal:

Another thing I want clarify is, in the actual Nevada Supreme Court case, *City of Fernley* ([Exhibit J](#)), what was interesting was that the Department of Taxation had administered an advisory opinion, and then they changed their answer, saying that instead of you being denied your ability to create services within one year, now your ability would run from the date the city commits to provide services. When I read that part, under the new part, the way the statute reads, technically you walk through the door and make your argument. You are committing to take on these two services. Does that then change? What would be the issues you stand on with the court?

I agreed to this hearing, but I have a problem with you guys walking back through the court when you were denied under one statutory provision and then creating another statutory provision that allows you to walk back through the court when the question that the court examined was the purposes of general government and whether you fell in or out, and whether the statutory provisions somehow was unfair. I need you to give me comfort around that. Why should we allow you to walk through a door that was closed, and then open a new door to challenge under a different statutory provision?

Josh Hicks:

One thing that needs to be understood is that the case that ended up in the Nevada Supreme Court, *City of Fernley*, did not start under NRS 360.740. This is not a bill about repeating the same process. That case happened because NRS 360.740 was not available to pursue. There was no administrative option. Fernley was really out of options. That case was not about this process. It was not about a decision of the CLGF. They were not involved with that case. It was not about the Nevada Tax Commission. They were not involved with that case. It was a case about fundamental constitutional issues about the CTX system and how it is set up and whether it meets some of the requirements of the *Nevada Constitution*. That is what that case was about. This is not recreating a process. That case is settled. The CTX system is constitutional. It is upheld as it is. This is about going through this administrative process. It has a much more narrow focus than that case, which was really a challenge to the whole CTX system.

Chair Neal:

Let us talk through this. *Nevada Revised Statutes* 360.740 is basically the second part of the provision that allowed you to do other functions. In the case, the court said if you are a second tier entity, then your options were if you did not fit under the first option being eligible under the CTX to provide services, your second option was that a new local government could assume functions of another local government. They could be a new local government entity that does an interlocal agreement with another local government in which you take on services provided by another local government, or agree to pay those costs. Why does the current interlocal agreement you have either tried or done not work?

Daphne Hooper:

My understanding is originally when Fernley was incorporated, there was an agreement between Lyon County and the City of Fernley that the county would provide those services. As time went on, there was one point when the sheriff said we do not have to have an agreement because the sheriff's office is required to provide services throughout the county regardless. As a result, today there is no formal agreement between the county and the city regarding law enforcement services.

Assemblywoman Bustamante Adams:

How much of the taxes the citizens of Fernley are paying is that portion of the Fernley police? What is the dollar amount the citizens of Fernley are paying for that? Does that make sense?

Nick Vander Poel, representing City of Fernley:

I am going to ask Mayor Edgington to address that question. It is a complicated question because you are asking out of the pool, how much they are paying into the sheriff's department, but then you also want to know how much out of the pool they are paying into the North Lyon County Fire Protection District.

Assemblywoman Bustamante Adams:

Correct.

Roy Edgington, Mayor, City of Fernley:

As one of you relayed earlier, the Nevada Supreme Court decision on *City of Fernley* on page 6 ([Exhibit J](#)) there is a line there that says, "At the time, Lyon County provided Fernley's fire protection, police protection, and construction, maintenance, and repair of roads, while also funding Fernley's three public parks."

I will discuss the fire protection. Fire protection was never provided by Lyon County. You can ask the County Manager. No county is required to do that. The citizens of Fernley organized a fire district in 1953. It has been in play ever since. When we created the city in 2001, Chapter 266 of NRS was very clear in its language that all districts stayed in play, with the exception of the fire district. Fire districts are absorbed into the city. Cities are required to provide fire protection. At the time it was felt that it would be better served if we left it separate because they were the same geographical area—165 square miles. The Nevada Cement Company and a couple of square miles of desert did not want to be part of it. The junkyard and the racetrack did not want to be part of the city. If you had over 100 acres, you did not have to be part of the city, so they left those in play. My argument has always been the citizens of Fernley pay for fire protection, not the state of Nevada and not Lyon County. I am a resident of Fernley and I pay into the North Lyon County Fire Protection District. I pay for my fire protection. It is \$1.5 million in revenue they generate in taxes, plus another \$1.5 million in services.

Assemblywoman Bustamante Adams:

That is my question. Is all of the \$1.5 million paid by the residents of Fernley?

Roy Edgington:

It is Fernley, and Fernley only, with the exception of Nevada Cement, a couple miles of desert, the racetrack, and a couple of junkyards. Even the county cannot argue that part. We provide fire. The only thing we do not provide is police. Construction and roads we do. There was an agreement with us, for tax, that we would receive a piece of every year from the county. There are years when we do not because they do not have the money. In addition, there are years they only give us half of it.

As for the public parks, those are county parks. They gave us \$60,000 per year to maintain those when we were a town. After we became a city, they continued to do that. We have 34 acres of parks. We now have 11 parks. We have three people on staff. The county has 120-plus acres of parks and they only have three people. We do roads, we do parks, and the citizens pay for fire protection. The argument is police. How do you come up with \$4 million to start a police department? That is our problem and I realize I am preaching to the choir, but we do pay for fire. If you look at the graph that was provided by the county ([Exhibit L](#)), add \$1.5 million in revenues, and that does not include services that they charge for the ambulance.

Assemblywoman Bustamante Adams:

How much do they charge for the ambulance?

Roy Edgington:

If I remember right, I think their budget is a little short of \$3 million. I will get you those numbers. Even they only receive a little bit more than we do in CTX—\$160,000.

Assemblywoman Bustamante Adams:

Out of the \$1.5 million, what does the bigger picture look like? What is the percentage of the total they collect? Is there more, or is it 99.9 percent paid by the citizens of Fernley for the \$1.5 million? Is there a bigger amount?

Roy Edgington:

That is it. That is their budget. They hire 12 people, plus a chief and a secretary.

Assemblywoman Bustamante Adams:

Whom do they report to?

Daphne Hooper:

The fire district is its own separate governmental entity. They have a fire board and it is just them.

Assemblywoman Bustamante Adams:

Are there any citizens of Fernley on the board?

Daphne Hooper:

They elect their board members.

Chair Neal:

Are there any additional questions? [There were none.]. We will open the hearing to those in support of A.B. 311.

Dana Uhlhorn, Private Citizen, Fernley, Nevada:

I work in real estate in Fernley. One of the problems in getting big investment in Fernley is the fact that we are having tax troubles. Everybody knows that. It is hard to get people to invest. We desperately need low-income housing. I have been talking with multiple investors to try to get them to come into Fernley. They have a problem with the taxation. That is one of the issues. The way I see the law written as it is, you are putting the cart before the horse. You are asking us to pay for a police department without the money to do so. If we had the money from the tax, we could do it. I do not think the City of Fernley objects to doing that, it is just the method of doing it.

Chair Neal:

Are there any questions? [There were none.] Thank you for your testimony.

Joshua Anderson, Private Citizen, Fernley, Nevada:

I want to reiterate what Mr. Uhlhorn was saying with the cart before the horse. It seems like a conundrum. It does not seem like there is a way out of this for the City of Fernley. Hopefully this bill is it, but how do you come up with the money for a police department without the increase in taxes that we as citizens already pay? There is an understanding that some of that may come from Yerington. Part of that may just come from the overall growth of the state. If we do not have a way out of it, then how do we grow? How do we maintain our services for those people moving in? With the TRIC, how do we accept their growth and help provide housing for them, and provide that industrial growth as well?

William Shattuck, Private Citizen, Fernley, Nevada:

I live in Fernley. I was walking in the hallway here a minute ago and I saw the big picture of the Burning Man event. In thinking about the equitable distribution of tax revenues, when Burning Man comes together right outside the City of Fernley, for about a week or two, I cannot go to the grocery store because the entire half of the town is taken over by this gigantic event that creates millions of dollars worth of revenue for the Bureau of Land Management, U.S. Department of the Interior, and for all sorts of other government agencies. It has a great impact on the citizens of Fernley, yet because of inequitable distribution of funds, there are no additional funds to pay for the impact to the city. There are other issues along that line. I liked Assemblyman Pickard's question very much about if you create a system that allows for anybody to come forward and ask for their fair share, what is to prevent them from doing that? Just as a citizen of Nevada, where the mosquito protection district gets a huge share of CTX, I like the idea that anybody who wants to get his fair share can at least make a case saying, Please hear me out—I exist.

Chair Neal:

I will now take testimony from those neutral on A.B. 311. [There were none.] I will now take testimony from those who are speaking in opposition to A.B. 311.

Mary C. Walker, representing Carson City, Douglas County, Lyon County, and Storey County:

We rise in opposition to A.B. 311. Assembly Bill 311 changes one of the basic tenets of the CTX law passed by the Nevada State Legislature in 1997, 20 years ago. During the mid-1990s, I had the privilege of sitting on the Legislative Technical Advisory Committee studying local government finance and taxation. It was this Technical Advisory Committee which developed the CTX mechanism for distributing various taxes to local governments throughout Nevada. Also, for the past 18 years, I have been a member of the CLGF.

I very clearly remember why NRS 360.740 required a local government or special district that is created after July 1, 1998, to provide police protection and at least two of the following services: fire protection, road services, or parks and recreation. There was a concern among the local governments and legislators studying this issue that you could have a new local government try to incorporate as a city simply to acquire additional CTX dollars. We felt strongly that if an entity were going to incorporate, then it needed to do so based on service, not what we called a "money grab."

The City of Fernley incorporated in 2001, several years after this law was put in place. Therefore, they knew the requirements very well and incorporated under those laws. Ten years later, in 2011, during the height of the recession—and they were short of funding as all local governments were—the City of Fernley introduced Assembly Bill 47 of the 76th Session to try to receive additional CTX revenue. This bill failed to pass.

The City of Fernley then proceeded to sue the State of Nevada in order to try to get additional CTX revenue. On January 14, 2016, the Nevada Supreme Court issued its opinion ([Exhibit J](#)) and denied the City of Fernley additional CTX revenues.

In the Nevada Supreme Court's opinion on *City of Fernley*, page 21 ([Exhibit J](#)), the 1997 Nevada Legislature's intent and the intent of the Technical Advisory Committee were confirmed:

The Legislature enacted the C-Tax [CTX] to encourage general-purpose governments that provide public services, such as police and fire protection. Additionally, the Legislature wanted to avoid new local governments that emerge to take advantage of extra tax funds without providing any benefit to its residents.

In this case, Fernley presents the exact situation the Legislature evidently sought to avoid: Fernley incorporated hoping to collect more tax distributions, but it has not provided any new benefits to its residents, beyond those it provided when it was an unincorporated town, nor has it assumed the fiscal responsibility of Lyon County for providing its services.

The Supreme Court then continued,

If Fernley did create or assume public services under one or more of the three different methods provided by NRS 360.600 *et seq.*, it would achieve the legislatively set goals and receive the increased C-Tax distributions; having not done so, its C-Tax base distribution stands. Therefore, the C-Tax classifications are rationally related to achieve its legitimate government interests of promoting general-purpose governments.

The C-Tax system is a general law that applies neutrally to local government entities and is based on classifications that are rationally related to achieving the Legislature's legitimate government objective of promoting general-purpose governments that have public services, such as police and fire protection.

Therefore, if A.B. 311 were to pass, it would change one of the basic tenets of the CTX law passed by the 1997 Nevada State Legislature, and that was upheld by the Nevada Supreme Court.

Fernley argues that the CTX distribution is unfair because it receives less revenue than other cities. The Nevada Supreme Court, in its January 14, 2016, opinion on *City of Fernley*, denying the City of Fernley's appeal for additional CTX revenue stated [pages 7 and 8, ([Exhibit J](#))],

Fernley argues that it receives far less revenue than other cities that are similar in population and assessed valuation, such as Mesquite, Boulder City, and Elko. For example, in 2013, Fernley received \$133,050.30 in C-Tax distributions, while Mesquite, Boulder City and Elko received \$7,336,084.71, \$8,885,664.66, and \$13,521,334.12, respectively. Although Fernley maintains that the C-Tax is unfair, Fernley recognizes that cities such as Mesquite, Boulder City, and Elko all provide the traditional general-purpose governmental services, while Fernley does not.

What is the effect if A.B. 311 were to pass? Many believe it will lead to a proliferation of towns and general improvement districts wanting to incorporate simply to be able to get more CTX dollars from all the other entities within the county receiving the CTX, while not providing any additional services. This could include Incline Village in Washoe County, Laughlin in Clark County, the towns of Minden and Gardnerville in Douglas County, and potentially several general improvement districts (GIDs) such as the

Indian Hills GID, which all provide parks and roads, and would qualify for additional CTX distribution without providing any additional services. If A.B. 311 were to pass, it will have statewide ramifications.

In addition, based on subsection 3, paragraph (b) of NRS 360.740, the Department of Taxation would be required to "Consider: (1) The effect of the distribution of money . . . to the new local government or special district on the amounts that the other local governments and special districts that are located in the same county" This means every other city, GID, fire district, town, or the county could be affected.

Ultimately, here is our major concern. The Nevada Supreme Court decision in *City of Fernley*, on pages 4 and 5 states,

If a Tier 2 entity—such as a city or a town—did not exist before July 1, 1998, or did exist, but wants to increase its base amount, there are three ways to qualify for an increased C-Tax distribution. First, a new local government is eligible for increased C-Tax distributions if it provides police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance, and repair of roads; or (3) parks and recreation. NRS 360.740. Second, a new local government can assume the functions of another local government (i.e., merger of entities). NRS 354.598747. Third, a new local government can enter into a cooperative "interlocal" agreement with another local government (i.e., taking over services provided by the other local government or agreeing to pay costs). NRS 360.730.

All three options involve the new local government providing services by either creating or assuming the responsibilities for the services. The Legislature feared that new entities could form and take money away from counties without having "any of the responsibility to share in any of the social parts of government."

If you change NRS 360.740 so police services are not required and Fernley only has to provide road and parks, they could qualify for an additional distribution of CTX from all the other entities in the county without taking on any additional services. Think about Lyon County and its entities. This would have the effect of taking CTX dollars from two entities which do provide police services [City of Yerington and Lyon County] to give revenue to Fernley, which does not provide police services or any additional services. It would also take away from our four fire districts. This is exactly the reverse of what the 1997 Legislature intended 20 years ago, which was to achieve the Legislature's legitimate government objective of promoting general-purpose governments that have public services, such as police and fire protection.

In addition, if A.B. 311 were enacted, it would reverse the primary intent of the 1997 Nevada State Legislature by allowing a new local government, which does not provide additional services, to receive additional CTX revenue " . . . at any time after the local government or special district is created . . . " according to section 1 of A.B. 311. That could be 50 years from now.

If A.B. 311 were enacted, according to section 1, subsection 6, the City of Fernley can sue the State of Nevada again if it did not like the decision by the Department of Taxation, CLGF, or the Nevada Tax Commission. The bill puts in new language, which never existed before, as follows, "A determination by the Nevada Tax Commission pursuant to this subsection is a final decision for the purposes of NRS 233B.130, and a new local government or special district that is aggrieved by the determination of the Nevada Tax Commission may file a petition for judicial review pursuant to NRS 233B.130." In this bill there is already contemplation of the ability to sue the State of Nevada again. This case was settled by the Nevada Supreme Court in 2016. Assembly Bill 311, in my opinion, reverses the Nevada Supreme Court's decision on *City of Fernley*. It reverses the 1997 Nevada State Legislature's intent. Assembly Bill 311 will reopen this subject to lawsuits all over again. Finally, for the past 16 years, Lyon County has offered several times to give police services ([Exhibit M](#)).

Chair Neal:

Ms. Walker, can you submit your testimony for the record?

Mary Walker:

I would be happy to.

Chair Neal:

Thank you. Do the members have any questions?

Assemblyman Pickard:

I appreciate the position you have stated, and I have read the Nevada Supreme Court decision on *City of Fernley* now a couple of times. I have to admit that I did not read it the way Mr. Hicks described it, until he described it. I just went through it again, and I see his point. They were actually answering a different question. It is certainly closely related, but it is a different question.

One of the things I have been sympathetic about is what happens when we are dealing with a city that grows, particularly growing beyond a point where they can reasonably sustain themselves. I was not here in 1997 when the Legislature made their determination as to who should and should not be eligible to receive the CTX. I am wondering if after 50 years, to use your term, a city grows through organic and other means to a point where they really should participate and they have obtained a size and a stature that would otherwise justify

any other, if they were to incorporate at that time, access to the CTX. Would you acknowledge that maybe there should be a lift of the one-year cap to allow such a scenario, to allow them to participate? Under what circumstances would a city that grows to that point ever become eligible?

Mary Walker:

First off, I believe that the importance of the Nevada Supreme Court case is that it documents the intent of the Nevada State Legislature on exactly why it was put in place—that you have to provide police services. It is my experience, at that time, it coincides. That was the legislative intent and that was the Nevada Supreme Court's decision. I do believe A.B. 311 reverses that.

As far as police services, NRS Chapter 354 is a section of law currently that is used by local governments. What the law says is, if one local government takes over services from the other local government, then what you do is you determine what the cost of that service was. Let us say it is police services, and the police services in Fernley cost Lyon County \$1 million per year. Under NRS Chapter 354, the County would give the City of Fernley the \$1 million to provide the service. The County is kept whole because it has \$1 million less in expenditures, and it has \$1 million in revenue, so they are whole. The City of Fernley goes ahead and does police protection because they are using the money that the County would have used. This is not difficult. This has been offered to them for 16 years. They do not have to come up with their own revenue source to provide police protection. The county would provide that to them.

As far as growth goes, it is not up to one particular revenue source to fund a governmental function. The two primary sources are CTX and ad valorem taxes. It is all of those sources together. To be able to have a local government, whoever it is, go in and take revenues away from, in this case, Lyon County, four fire districts, the City of Yerington, and Lyon County—that is six entities that provide public safety—and give it up to give it to the City of Fernley, that provides no public safety, no fire or police, and it does not provide fire. Fire is provided by a separate local government; it is a fire district. Yes, the taxpayers of Fernley pay that, as well as some of the taxpayers in the unincorporated area pay that within the boundary, but the City of Fernley does not. Fernley does not provide the fire protection. The separate local government, NRS Chapter 474, provides that fire service.

When you look at Lyon County, before the recession their population growth was one of the highest in the United States. Lyon County has the exact same problems, so does Yerington, and so does Dayton. Lyon County is one of the poorest counties in the state. You cannot just take one section of it and say, Well, this guy is poor. What about Lyon County, which laid off over 100 people and has only been able to bring back two? We can tell you lots of stories about that too.

Assemblyman Pickard:

I do not want to go too far afield. I appreciate that. I think there is a difference between participating in the CTX and simply having the county cover the cost. I think there is a little bit of apples and oranges, or at least answering a different question. I am wondering, if in your mind, as a county, if a city gets to a point where it would otherwise have been eligible for participation in the CTX program, is there an appropriate way of getting into that, or in your mind, because the city did not do it in that first year, is therefore closed, and no matter what happens the city should not get it?

Mary Walker:

Actually I disagree with some of the prior testimony that said they could only do it within one year because that is not true. You can go into an interlocal agreement to get the CTX dollars from other entities.

Assemblyman Pickard:

I am looking at NRS 360.740, subsection 2. Does that not limit them to requesting it within the first fiscal year?

Mary Walker:

For that scheme, but the Nevada Supreme Court came out and said there were three ways you can get additional CTX. There are two other ways to get additional CTX that do not have the one-year limitation.

Assemblyman Pickard:

I understand. You are right. Thank you.

Jeff Page, County Manager, Lyon County:

Contrary to popular belief, Mayor Edgington, Ms. Hooper, the City Manager, and Lyon County get along pretty well for the most part, other than this one little issue. I am not going to go into great detail on my written testimony ([Exhibit N](#)) other than to say a few things.

I provided you three documents. One, of course, was the Nevada Supreme Court decision on *City of Fernley* ([Exhibit J](#)). The second one was a chart ([Exhibit L](#)) that provides the City of Fernley's argument in the Nevada Supreme Court, comparing them with cities. It showed you what those cities received in CTX and what they paid for public safety. The third was a metric, put together by the sheriff ([Exhibit O](#)). Somebody asked what is the cost to provide law enforcement in the City of Fernley. The sheriff, because he has been getting beaten up by members of the community in Fernley over their not getting their fair share, put together a metric of what services they provide and what it costs his budget to provide those services to the City of Fernley. It is about \$4.5 million annually that he is providing in services to the City of Fernley.

The City of Fernley is 45 miles from the county seat, which is Yerington. Yerington is where the sheriff's main headquarters are located, as well as the county jail. When an arrest is made in Fernley, it is made by a Fernley deputy or a Nevada Highway Patrol trooper, and they are transported all the way down to Yerington. Eventually they will have to go to court. They are driven back up by the sheriff to either the Fernley Municipal Court for misdemeanors or the Canal Township Justice Court for felonies. Court is held and they are transported back to Yerington. The sheriff's office is the only public safety answering point for 911 in the county. They provide dispatch services for all of Lyon County, including the City of Fernley and the City of Yerington, of which neither the City of Fernley nor the City of Yerington is charged for services. We also provide search and rescue as mandated by statute.

I was with the Lyon County Sheriff's Office from 1985 to 2006. I was present when we went through the process of Fernley becoming a city, and the interlocal agreement that existed. The city is correct that the sheriff at that time, with the advice of the city attorney and the district attorney, could not figure out why we had an interlocal agreement in place because there was no tit-for-tat. We were not receiving anything. We were just providing services. We were going to continue to provide those services with or without an agreement, so why did we have an agreement? That is why the agreement went away. They were correct in that assumption.

When I first started with them, we had a sergeant and five deputies in Fernley. They are now running a staff of about 15 in Fernley today, plus detectives and narcotics are there on a regular basis. It is one of our higher call-volume areas because you have 19,000 people crammed into a much smaller area than you do in the rest of the county.

In contrast, the City of Yerington, located in the southern region of Lyon County, is my other city and is much smaller at about 3,000 people. It is the county seat. They have their own police department.

I am a second generation with the fire department, with my father. In the old days, the fire chief would write out the bills and would determine which ones would go to the city and which ones to the fire district. They did away with that and entered into an interlocal agreement—the district and the city. The city pays the fire protection district the assessed valuation times the district tax rate. The City of Yerington pays about \$80,000 to \$85,000 to the Mason Valley Fire Protection District. They budget in public safety for fire and law enforcement, even though they are not providing the actual fire service.

We built a new jail facility and opened it in 2013. The county entered into an interlocal agreement with the City of Yerington that if they would provide us water and sewer for no charge, we would provide them the ability to utilize our jail and our dispatch services for no fee. They also waived about \$300,000 to \$400,000 in hookup fees to the new facility. You can imagine that was a big hit to the city. In the issue of being fair, for the most part it has been pretty positive.

I truly understand the impacts Fernley is facing right now. The USA Parkway will open in September to December of this year, and we will see a flood of traffic going through Lyon County like we have not seen before. We got to experience that about three weeks ago when the Department of Transportation and Churchill County decided to create a new lake for the state of Nevada and put a series of culverts in place on U.S. Highway 95. When they did that, they shut down Highway 95, and we got to experience what that truck traffic was like.

We, too, are very concerned about the potential of growth to Lyon County. You have to remember, from 2000 to 2010 our population increased 50-plus percent. We were the fastest-growing county in the nation. In 2010 we went from the fastest-growing to the highest-unemployed and highest-foreclosed county, not only in the state, but in the nation. We, too, have felt those fiscal impacts.

My concern with the bill, the way it is written today, is that it affects the second tier. There are ten entities in Lyon County that receive CTX. Everybody understands where CTX comes from. We live off of what Las Vegas and Washoe County sell. You want to start talking about fairness, I am pretty certain that Clark County would not mind having all its sales tax back. My concern is, with the second tier, what services does Lyon County cut? Services the County provides to both cities, services that are not mandatory, are both cities have a library and both cities have a senior center. We are not mandated to provide either of those. My Board of County Commissioners would have to make a decision. If we have to give CTX to Fernley, do we shut down the senior center in Fernley, do we shut down the senior center in Yerington, or the library? Then there are the other duties that are mandated by not only state law, but the *Nevada Constitution*, for elected officials, that we have to provide funding to those elected officials. I have been challenged by elected officials in the past as to whether I am providing them enough funding. I have been sued by elected officials because they did not like the fact that we froze salaries for a year because of the poor economy. Those are the challenges a county faces in providing the services. We currently provide Fernley with \$60,000 per year for the parks, and we try to provide that on a regular basis. It has been upward of \$300,000 down to, I think, \$140,000 to \$180,000 this year to help them with their infrastructure costs.

We have gone after a bill [Senate Bill 439] to deal with adding a 5-cent-per-gallon tax to diesel fuel—not a popular topic when you come from rural Republican Nevada. When we wrote that legislation, we included that if passed, that tax would be treated just like the Regional Transportation Commission funding, and it would be provided to the two cities based upon assessed valuation. We did that knowing the financial climate for Lyon County, the City of Fernley, and the City of Yerington.

We also have road issues. We have about \$35 million in deficits on roads right now, and that adds up to about \$1 million to \$1.5 million every year. That goes up if we have to replace those roads that have failed or are in failing status now. We understand Fernley's concerns. We do not know that this is the right solution to their problem.

Chair Neal:

Thank you for your testimony.

Rich Harvey, Fire Chief, Central Lyon County Fire Protection District:

We are one of the ten Tier 2 CTX recipients in Lyon County. We are the biggest fire district in Lyon County, both in terms of population served and area served. Our district runs from the Carson City line all the way to Lake Lahontan. We have a lot of jurisdiction and we are very busy. We run four-person minimum staffing; that is two rescues per day. Half the time both of our rescues are in service. It is a long way from Silver Springs and Lake Lahontan to the nearest hospital. Those guys are committed on these turnaround times.

We understand what it is like not to have enough funds to do the job you have to do. We do not think we should be the ones who give it up without giving up the service that is there. We do not get a lot from CTX. Most of our budget comes from ad valorem tax, but we do use what we get from CTX to provide service for those communities.

As Mr. Page mentioned, USA Parkway is going to open, and it is going to come into Highway 50 right in the middle of our district. Our calls for service are not going down. Our calls for service are going up. We are getting good residential growth. We are seeing the transports on the roads, and those CTX dollars help us provide that service to our community.

We empathize very much with our neighbors. Everybody needs some funding to help deal with the services that have to be provided, but taking it from one entity that provides fire service and giving it to another that does not provide fire service is not a very good solution. Maybe there is another way to do it, but I would ask you to look at how the Tier 2 funds are distributed. It is not perfect. We fight all the time, but it does work.

Wendy Lang, Human Resources Director, Douglas County:

I am here today on behalf of our County Manager, Larry Werner. I would like to express concern with the far-reaching effects of this bill. Consolidated tax makes up 27 percent of Douglas County's general fund revenues. If this bill were to be successful, local governments in Douglas County would qualify for additional revenues without the onus of providing additional services. That means Douglas County would be required to continue to provide these services with significantly less resources. I want to thank you for your time and consideration.

Chair Neal:

Thank you for your testimony. Are there any questions from the Committee? [There were none.] Is there anyone else speaking in opposition?

Jeff Fontaine, Executive Director, Nevada Association of Counties:

I know the hour is very late, so I will try to be brief. Many of the comments I was planning to make have been made by others. We, too, have to empathize with the City of Fernley, but shifting CTX funds from counties is not the answer. We have counties

that are struggling as well. For example, Nye County is currently on fiscal watch by the Department of Taxation. Counties, just like cities, have to prioritize their limited resources, and counties do not have the luxury of picking and choosing which services they provide. Many of the services, or probably most of the services, are mandated by you, by the state: indigent medical, indigent legal, nursing homes, district courts, assessments that we pay, the counties pay to the state for public health and for presentence investigations, just to name a few. These are some of the issues we are concerned about, and public safety is the largest county expense. If this bill were enacted, it would relieve Fernley, and potentially other governmental entities, from having to provide that responsibility for police, and that just does not seem quite right to me.

We think that the CTX legislation has prevented the proliferation of governments that do provide limited scopes of services. That would change under A.B. 311 and would open the door to more of those types of entities forming and receiving a portion of the CTX. More important to us, we believe it would severely compromise the ability of our counties to provide for public health and safety. Thank you for the opportunity to comment.

Chair Neal:

As far as the Nevada Association of Counties is concerned, are you trying to come up with some different solutions to help Fernley as a collective group, like you came together for property tax? If there are other solutions out there, it might be wise to consider them. I do not know about the interlocal, I do not know about the fuel tax money, I do not know about other things that may be vehicles to allow some more money to come into the city. I think it is something you should consider, and not just leave them out there struggling.

Jeff Fontaine:

If you are asking for a response, we agree. I have been before this Committee before and you know the situation with local government revenues and, in particular, county revenues. Property taxes were flat this year and we have presented that in our bill, Assembly Bill 43. Property taxes are an important part of this equation. Ms. Walker pegged that correctly. We have counties where CTX is important, but we do not have growth in CTX in some of our rural counties, so they are relying on property taxes. There is a mix of revenue sources here that we ought to be looking at, which may or may not address the problem.

Chair Neal:

Thank you for that. Is there anyone else speaking in opposition? [There was no one.] I will ask the bill sponsor to make closing comments.

Assemblywoman Titus:

Thank you all for your patience and your excellent questions on A.B. 311. When I was elected in 2014, I had never heard of CTX, and when I did hear about it, I ran away as fast as I could for all the reasons you are hearing today. I represent 64,000 people in my district, of whom 19,000 live in the City of Fernley. It is my job to see that all of my district has equal representation. Today we heard all sides of the argument. At the end of the day, we still see that Fernley has serious concerns, but so does the rest of the county and, I think, the state. I think you brought up some good points. I hope they can work some things out. I think this bill and this discussion will hopefully lead to some of those solutions and not just more questions. Again, I thank all of you for your patience, and hopefully we can go forward with more communication.

[([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), and ([Exhibit S](#)) were presented but not discussed and are included as exhibits for the meeting.]

Chair Neal:

We will close the hearing on A.B. 311. I will now open the meeting for public comment. Seeing none, we are adjourned [at 6:58 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.

[Exhibit C](#) is a letter dated February 8, 2017, in support of [Assembly Bill 62](#) to The Honorable Dina Neal, Chair, Assembly Committee on Taxation, submitted by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General, for Adam Paul Laxalt, Attorney General.

[Exhibit D](#) is a proposed amendment to [Assembly Bill 62](#) presented by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General, for Adam Paul Laxalt, Attorney General.

[Exhibit E](#) is a letter dated March 27, 2017, in support of amendments to [Assembly Bill 62](#) to the Honorable Dina Neal, Chair, presented by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General, for Adam Paul Laxalt, Attorney General.

[Exhibit F](#) is a copy of a PowerPoint presentation titled "Introduction to the Master Settlement Agreement," presented by Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General.

[Exhibit G](#) is written testimony authored and submitted by Samuel P. McMullen, representing Altria Client Services LLC, in support of [Assembly Bill 62](#).

[Exhibit H](#) is a proposed amendment to [Assembly Bill 62](#) presented by William Horne, representing Ryo of Nevada Association, Incorporated; and Vegas Brothers.

[Exhibit I](#) is a copy of a PowerPoint presentation titled "Nevada Assembly Committee on Taxation," dated March 28, 2017, presented by Daphne Hooper, City Manager, City of Fernley.

[Exhibit J](#) is a copy of a Supreme Court of the State of Nevada Decision No. 66851, dated January 14, 2016, submitted and presented by Jeff Page, County Manager, Lyon County.

[Exhibit K](#) is a proposed amendment to [Assembly Bill 311](#) presented by Joshua J. Hicks, representing City of Fernley.

[Exhibit L](#) is a chart showing consolidated tax revenue received and public safety expenditures for fiscal year 2016 submitted and presented by Jeff Page, County Manager, Lyon County.

[Exhibit M](#) is written testimony presented by Mary C. Walker, representing Carson City, Douglas County, Lyon County, and Storey County, in opposition to [Assembly Bill 311](#).

[Exhibit N](#) is a letter dated March 27, 2017, in opposition to [Assembly Bill 311](#) to the Assembly Committee on Taxation, authored and presented by Jeff Page, County Manager, Lyon County.

[Exhibit O](#) is a document titled "Public Safety Fair Share" presented by Jeff Page, County Manager, Lyon County.

[Exhibit P](#) is a document titled "Estimated Taxable Sales for the City of Fernley for FY 2014 and FY 2015," submitted by Daphne Hooper, City Manager, City of Fernley.

[Exhibit Q](#) is a document titled "2017-18 Preliminary Projections, Consolidated Tax Distribution, Revenue Summary by County" submitted by Daphne Hooper, City Manager, City of Fernley.

[Exhibit R](#) is a document titled "Estimated Reduction in CTX, 2017-18" submitted by Daphne Hooper, City Manager, City of Fernley.

[Exhibit S](#) is a document titled "Estimated Reduction in CTX, 2017-18" submitted by Daphne Hooper, City Manager, City of Fernley.