

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

**Seventy-Ninth Session
March 30, 2017**

The Committee on Taxation was called to order by Vice Chair Irene Bustamante Adams at 4:06 p.m. on Thursday, March 30, 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:

None

STAFF MEMBERS PRESENT:

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



OTHERS PRESENT:

Irma Fernandez, Legislative Aide for Assemblywoman Irene Bustamante Adams,
Assembly District No. 42
David Cherry, Communications and Intergovernmental Relations Manager,
City of Henderson
Brian McAnallen, Government Affairs Manager, Office of Administrative Services,
City of Las Vegas
Mary McElhone, Business License Manager, City of Las Vegas
Nick Vander Poel, representing City of Fernley
Marcus Conklin, representing Airbnb, Incorporated

Vice Chair Bustamante Adams:

[Roll was taken.] We have two bills today. We are going to start with Chair Neal's bill. I would like to open the hearing on Assembly Bill 266.

Assembly Bill 266: Authorizes tax credits for employers who provide paid family medical leave for employees. (BDR 32-709)

Assemblywoman Dina Neal, Assembly District No. 7:

There are a couple of changes, which we will go over in the proposed amendment ([Exhibit C](#)). I will walk you through some history on the bill, the utilization of paid leave, and the actual language.

This particular language came from North Dakota, from a bill that was presented in 2015 [64th Legislative Assembly Of North Dakota, Senate Bill 2224]. The reason why I uploaded the fiscal note ([Exhibit D](#)) is so you could get an idea of how much it cost North Dakota. What is interesting about this bill is it did not actually pass. North Dakota has a lot of heavy business incentives, so just because it did not pass does not mean it was not good language.

To give you a little background on paid leave, typically, in other states, paid leave has encompassed several things. Most of the legislation has dealt with the type of claim, the duration of the claim, the use of the leave, whether the employer can offer the sick leave if they are already doing the program, what happens if an employer is not offering sick leave, and what kicks in. Typically, there is a combination of employer contribution, payroll deductions, and sometimes statutory limits. This particular piece of legislation fit into the national mold; it just has some slight deviations.

What I wanted to share with you is who typically engages in the use of leave. This was actually a 352-page study ([Exhibit E](#)), so I only gave you portions of it. I wanted you to be able to see who accesses it and that this was a good example. This study compared California, New Jersey, and Rhode Island. It deals with the class of claims. What is common across the theme of all paid leave programs is what you can use paid leave or

family medical leave for. In this case [slide 2, ([Exhibit E](#)), you see California, New Jersey, and Rhode Island. You can see the percentage of individuals who used it for care, and the percentage who used it for bonding. Typically, "care" would be for a sick family member, and "bonding" would be for a new child—whether someone has given birth or adopted a child—where they would want to spend time with the child. I thought this was unique because it shows the impact of this legislation.

If Assembly Bill 266 passes out of Committee, I wanted to give you a really good picture of what the impact could be, and also what the data could be in Nevada's future that we would like to collect or mimic. Other states are already doing this process of trying to figure out who, by class or by circumstances, is accessing the actual legislation.

Slide 3 ([Exhibit E](#)) shows claims per thousand residents and key observations for California, New Jersey, and Rhode Island. I thought it would be really good information to help you see and understand we could potentially have people using it. It is important to note who will access this and if this bill is going to be utilized for families. What you can see on this page is that it is being utilized in a big way.

Slide 4 ([Exhibit E](#)) breaks down males and females who used the program. As you can see, the majority of the claims are used for females, but males are also using it for paternal leave. In one study [slide 5, ([Exhibit E](#))], it turned out that in California, more commonly than not, after a female gave birth she would use the family medical leave for two weeks, and males would trigger the provision for about one week. I would say that this is an equal play of legislation.

The reason I wanted to show you slide 5 ([Exhibit E](#)), is I thought the data was unique. For California it shows a good correlation between counties for share of eligible births, share of paid family leave (PFL) claims, and the relative distribution of those claims for mothers. I thought this was a really good correlation, only because I am always focused on data. I was interested in what other states were doing in order to help us understand who is using it, where is the use, and how often is it being triggered. Slide 6 ([Exhibit E](#)) shows the breakdown for fathers in southern California who were actually using the PFL bonding benefits, and once again the correlation.

The information on slide 7 ([Exhibit E](#)) is very interesting. It shows in California that the bonding claims happened between the ages of 21 and 40. You can see who is triggering the claims. In the blue you have high rates of females between the ages of 21 and 30. There are also high rates of females between the ages of 31 through 40. You see a de minimis right around ages 41 to 50. Clearly, in regard to bonding claims, we do not have a lot of women who are giving birth between the ages of 41 to 50. California did a 10-year study [slide 3, ([Exhibit F](#))], and what was interesting is they discovered that lower income and younger folks, under 21, were not using or going after the bonding claim. They were not triggering it at all.

The next part of the data is the income levels of who was triggering the bonding claims [slide 8, ([Exhibit E](#))]. You will notice the lower-income females, making \$12,000 or less, did not go in and try to use that provision of law. Females within \$12,001 and \$24,000, and \$24,001 to \$36,000, were triggering it and using the law to their benefit, and then you see the decrease. There is another spike around the \$84,000 and greater level of females who were using it for the bonding claims.

The only thing we actually have in Nevada is the Family and Medical Leave Act of 1993 (FMLA), which is federal language. We do not have a state law that is triggering the use. I thought if we were going to have a conversation, we needed to know how it is working in other states, the candidates or individuals who would be using it, and it would be good to know by income level who was triggering it.

Slide 9 ([Exhibit E](#)) shows the participation rate by females and by the mothers' personal income. I thought this was very telling information because it is a duplicate of the previous slide where the higher rates fell within that \$24,000 to \$48,000 income level, and then you saw an increase from \$72,000 to greater than \$84,000 of who were actually using the bonding benefits.

The last page [slide 10, ([Exhibit E](#))] shows the integrated leave, meaning they have a supplemental paid family leave—paid time off—to avoid losing high income. You can see those over \$84,000 were mostly triggering that particular type of claim.

I offered this information because I thought it was a good way to start by having the conversation about who utilizes this. These states are the most prevalent in terms of the data collection and information. I wanted to offer this as an entry point to the conversation before I got into what the bill does. Do you have any questions on this part?

Assemblywoman Benitez-Thompson:

I did not want to make any assumption. I did not see it here. But when we are looking at this data—looking at it by income—are these full-time employees? I would assume that \$12,000 or less might be a part-time employee. I do not think mathematically they could be full-time because that would be tragic.

Assemblywoman Neal:

It might be tragic in California, but if you are making \$7.25 per hour that could potentially be a full-time person, but it could also be part-time. I am sure somewhere in the complete 352-page study it broke that down, but I think the majority of those were full-time claims. The individuals with lower incomes were not triggering it from the study I read. It was almost based on the amount. In California there is a certain threshold to how much you have to be making. It was not actually to their benefit to utilize the program. I think in California, 66 percent of the pay can be taken for leave, so at \$12,000, I do not know. I guess you might as well just go to work.

Assemblyman Pickard:

I know California and New Jersey have state programs. I do not know about Rhode Island. Are these numbers based on the state, those who take the leave under state rules, FMLA, or both? Do you know?

Assemblywoman Neal:

These, in particular, were the state law, and the integrated was the hybrid. This is actually the application under the state law programs.

Assemblyman Pickard:

Nevada does not have a state program. I think there is a bill on the Senate side looking to mandate leave and create this program [[Senate Bill 196](#)]. Is your bill intended to dovetail that bill? Is there coordination in the two?

Assemblywoman Neal:

I cannot say that it dovetails because the bill is actually structured differently. I also provided you *Expecting Better: A State-by-State Analysis of Parental Leave Programs* ([Exhibit G](#)). It does a state-by-state analysis on the parental leave programs. For Nevada, we only have the FMLA provision, and we actually received an F in having laws that guarantee job protection and benefits for new parents. I thought this was a good resource only because it broke down every single state. You can see what they have at the state level, what they have at the federal level, and it gives you a some analysis around what they have.

I do want to state a couple more things about the California study ([Exhibit F](#)). They are unique because they had the benefit of doing the program for ten years and then learning a few lessons from their program. One thing they found out was the mothers who were employed during at least 32 pregnancy weeks, who gave birth between 2000 and 2010, about 55 percent of those mothers who were sampled actually took at least one week of paid leave. I thought that was very interesting. It was a longitudinal survey that was done. They wanted to find out who was taking the leave and what the duration was, and for the average mother, the California paid-leave program was predicted to increase leave-taking by about 2.4 weeks. Even though California only provides about 6 weeks of leave, they were triggering the provision for about 2.4 weeks and, as I said earlier, for men they were using it on average about one week.

What was also interesting is that fathers typically do not trigger the paternal leave in large amounts. I would guess because they felt they did not have access to take off the time from work. They also interviewed 250 California firms to find out how burdensome this policy is. They did in-depth interviews with about 20 firms. What they found out was that roughly 90 percent of the firms in their survey said that the law had either a positive effect or no effect on productivity, no effect on profit, no effect on morale, and no effect on costs. I thought that was really very telling because a lot of folks say when you give leave, then you are actually losing your workforce for a period of time, and you have to find a substitute or a filler for that particular position. I wanted to highlight that information, to offer some insight into how it is working in other states.

Assemblyman Pickard:

Please point me to where you were looking because I did not find it in the report. What page are you on?

Assemblywoman Neal:

That report is one I have not uploaded, which was "California's Paid Family Leave Law: Lessons from the First Decade." We were running at a disadvantage today, but I will definitely share this. [([Exhibit F](#))] was uploaded following the meeting.]

Vice Chair Bustamante Adams:

If A.B. 266 were to pass, does the Department of Employment, Training and Rehabilitation have the capability to capture the data as they did in California?

Assemblywoman Neal:

That is a good question. This report was prepared for the U.S. Department of Labor, but the integrated partners actually came from universities that helped to collect the data. These included the Columbia Business School at Columbia University; the Jennings A. Jones College of Business at Middle Tennessee State University; the University of California at Santa Barbara; the Frank Batten School of Leadership and Public Policy at the University of Virginia; and the Columbia University School of Social Work. It was produced June 23, 2014 ([Exhibit F](#)). They came together to compile their research, to help with the 10-year lesson.

I will now explain the bill and what it does. It is important to understand that this bill looks like it duplicates itself. Section 1 applies to the modified business tax (MBT) of mining and financial institutions, and section 2 applies to everyone else. What is the MBT? Modified business tax is based on the wages you pay, minus the health care deductions, and less your family leave pay. For financial institutions and mining, which is section 1, they pay a rate of 2 percent. For section 2, which are all other businesses, they pay 1.475 percent on all taxable wages above \$50,000 per quarter. The first \$50,000 is exempt, therefore there would be no wages deducted from those who fell under \$50,000, and they would not be eligible for this program.

If you look at the proposed amendment ([Exhibit C](#)), section 1, subsection 1, breaks down the class of circumstances in which you must fall into in order to use the leave. Those are in paragraphs (a), (b), (c), and (d). Section 1, subsection 2, is the total amount that you can take and the time period. If you notice, it actually mimics a portion of the FMLA because it allows you to take family medical leave wages for a period of more than 12 weeks in a 12-month period, but you cannot exceed \$500 per employee per week.

Section 1, subsection 4, is how you qualify for the credit. It also tells you in paragraph (b) how much of the wage you can actually take. You can only get 75 percent of your normal wages in your leave over the period of time. The maximum amount is \$500 per week, per person.

The next provision in the bill allows the employee to be restored to their position, which is section 1, subsection 4, paragraph (d). The person would take leave, and when they come back, the employer has to restore them to their original position.

On page 2, lines 17 through 21, this is the provision that speaks to the time period. There were some questions around when an employee should request leave. Typically, in other states, they have given a time period for that. They have said seven days—you must give seven days advance notice—and in this case we provided more flexibility by using "reasonable time." That would be a policy that would be created by the employer.

In section 1, subsection 6, paragraph (a), this is the provision of the bill that talks about the process. How the claim is created and the process you go through to claim the deduction. In this case the employer is going to claim the deduction upon the request of the Department of Taxation. What we are thinking here is the Department of Taxation will have to create a form or modify their existing form, in order to allow the wage deduction for the paid leave. Section 1, subsection 8 says what family medical leave wages are.

Section 2 of the proposed amendment ([Exhibit C](#)) is a repeat of the same language, just applied to everyone else who is not a financial institution or a mining company. The rate for section 2 is the 1.475 percent grouping of other institutions I mentioned earlier. So not to repeat myself, it pretty much goes over the same exact thing. You will notice there is an enforcement provision, which is the certification that you have paid the family medical leave wages and you need to document it. Then, under penalty of perjury, you need to let the Department of Taxation know that this is what you truly did. The effective date of January 1, 2018, is in section 4, subsection 2. This gives the Department of Taxation enough time to modify the forms if the bill was to pass.

I will open myself up for questions, but I need to clarify one thing. I was mixing apples and oranges when I was explaining the MBT and how this actual deduction of wages will work for the paid leave credit. Basically, each dollar you pay as an employer you can deduct from the wages you have on the MBT. In this case it would be minus the health care deduction and then less whatever you end up paying for the family leave pay, up to \$500.

Vice Chair Bustamante Adams:

We will take this in small bites. We will take section 1 of the proposed amendment ([Exhibit C](#)) first. Chair Neal mentioned in her testimony that 2 percent is for mining companies and financial institutions, and 1.475 percent is for all other businesses. I will ask our policy person to explain to the Committee about the MBT and why it is different for other businesses.

Michael Nakamoto, Deputy Fiscal Analyst:

The tax in question here is the MBT, which is the modified business tax. It is in *Nevada Revised Statutes* (NRS) Chapter 363A. It is imposed on mining companies and financial institutions at a rate of 2 percent of all taxable wages. For the purpose of this text, as Chair Neal noted, taxable wages under current law are the wages you pay to your

employees, less eligible health care deductions. For financial institutions and the mining companies, all taxable wages are paid at a rate of 2 percent. For all other businesses, which is under NRS Chapter 363B, which would be amended in section 2 of this particular proposed amendment ([Exhibit C](#)), the rate is 1.475 percent on all taxable wages, and, again, those are wages paid to employees, less eligible health care deductions, for taxable wages in excess of \$50,000 per calendar quarter. The first \$50,000 in taxable wages per calendar quarter are exempt from the tax.

Vice Chair Bustamante Adams:

It will be important to remember that in section 2, because if you do not make \$50,000 per quarter, it would not apply to those small businesses. Is that correct Mr. Nakamoto?

Michael Nakamoto:

You are correct. Businesses that have wages below \$50,000 would be able to take the deduction, but they would still be below the \$50,000 threshold, so their tax liability would still be zero.

Vice Chair Bustamante Adams:

Let us take section 1, subsection 1 of the proposed amendment ([Exhibit C](#)). This talks about the reason an employee would take leave in this proposal. Does anyone have questions on what would qualify?

Assemblywoman Benitez-Thompson:

Mine are questions to make sure we have clarification for the record. A lot of this is mirroring of the federal FMLA language. One thing I am not sure of is all the conditions are about health, excluding for adoption or foster care. I know on the FMLA paperwork the requirements you were talking about mirror the federal requirements. The certification on the FMLA is coming from a provider of health care. I am wondering if, in the case of an adoption or foster care placement, in lieu of a health care provider's certification, would you accept certification from the agency placing the child?

Assemblywoman Neal:

I am not clear on that question. Why would the adoption agency be the person who triggers the circumstances to use the leave? I need to clarify something. It only mimics FMLA in the 12 weeks within the 12-month period. The other classifications fit what have been the standard classifications, in making sure there are a finite group of circumstances in which a person cannot be present at work. Once you get too expansive you have more and more people who are not in your workforce, which is not necessarily a good policy to move forward.

Assemblywoman Benitez-Thompson:

It is easier than that. The question is for section 1, subsection 1, paragraphs (a) through (d), and section 1, subsection 5, paragraph (c). The employee is required to provide to their employer a certification from a provider of health care to support their request for leave,

but there are two things that we are granting leave for that would not require interfacing with a health care professional. If I were going to adopt a baby, that does not necessarily require me to have a hospital admission. I would not necessarily have my health care provider say I needed to take time off, but for adoption or foster care would it not make more sense for that certification to come from the agency placing the child? That is unless you want it to be from the child's pediatrician. Do you understand what I am asking?

Assemblywoman Neal:

I do understand now. I do not know if I would put the adoption agency in that role. When I first read this bill, I was thinking that typically once you adopt a child, this is more related to the bonding time, and you would want to take off because you have adopted the child. I know the agencies will do something, but once you get the child, you are probably going to your first pediatric visit with that child, and then you are asking to take leave for bonding. I do understand what you are saying. I just do not know how an agency—the adoption agency specifically—would offer that certification to the employer stating the employee has adopted a child and this employee needs to take leave because they need three weeks with the baby.

Assemblywoman Benitez-Thompson:

Currently, when I help families complete FMLA paperwork—when their loved one comes on to hospice and we are looking at full-time leave versus intermittent leave—there is a front portion of the form the employee completes, and then the back portion is what the provider of health care will complete. Although I used to work in adoption and foster care, I never interfaced with families on the FMLA part. I am asking the question because as opposed to having a signature from the health care provider, it could be a signature from the agency, or because we are also looking at armed forces, we would accept a signature from the military.

I do not think it would be too burdensome for the foster care or adoption agency, private or public. They are usually doing a ton of paperwork for families to prepare them for that adoption anyway. I would actually think it would be pretty forward-thinking to include into that packet, signing that FMLA paperwork, so as soon as that action happens in the courtroom everyone can go home and have good bonding time. This is just for consideration.

Assemblywoman Neal:

Okay. It is something to consider. I was writing it down and taking notes. I will check into that and see how it has worked in other states.

Assemblyman Flores:

I need some clarification. I am looking at page 1, line 14 ([Exhibit C](#)), where it reads "for any qualifying exigency." We are not defining what "qualifying exigency" is. Are we just going off of the federal statute?

Assemblywoman Neal:

I figured that because this related to the U.S. armed forces, meaning deployment, you have an existing emergency that arises where you are assigned to active duty or called to active duty. That is the only thing I related to.

Assemblyman Flores:

The only reason I brought that up is I was looking at the U.S. Department of Labor. They have a fact sheet for the Family and Medical Leave Act [Fact Sheet #28: The Family and Medical Leave Act]. They go in and create nine broad categories for what "qualifying exigency" falls under. They state specifically this is a qualifier. I do not know if we would want to categorize specifically what a qualifier would be and/or if we would just reference it back to the Family and Medical Leave Act.

Assemblywoman Neal:

Are you saying take section 1, subsection 1, paragraph (d), and create subparagraphs (1) through (4) to reference the federal law? I think it would easier to reference the federal law, unless this policy committee felt they wanted to create a finite group of circumstances that represent an emergency or exigent circumstances for a person who is in the military. That would be a policy discussion here—to either choose to take the broader nine factors at the federal level, or to slim it down, to fit into alignment with what the U.S. Department of Veterans Affairs already has in place under their deployment statutes.

Assemblyman Flores:

I personally do not prefer one route over the other. I do think we should always use our federal statutes, federal laws, or federal acts as our floor. We could start there and build on top of them. I think that would be the better route, but this is your bill.

Assemblywoman Neal:

I would be open to that. When I was researching this over the summer, before this bill landed in my lap, I kept thinking about how wide and how broad I wanted the circumstances to be, or the class of circumstances to be, to trigger leave. I wanted to make sure an employer was going to keep their workforce and keep people working. That classification should not be so broad that anyone could walk away for any circumstance, and the next thing you know nobody is at work. That is not good policy. It is good policy when there is an actual need, and you can see there is a benefit to the health and morale of the worker to take that leave. We could have further conversation around how wide or broad we want to go with any of this.

Assemblywoman Cohen:

Given that we still have domestic partnerships in Nevada—formal domestic partnerships under our statutes, and they have the same rights as our marriages—for the sake of clarity should we be including them in section 1, subsection 1, paragraph (b)? I could point you to the domestic partnership statute in which the rights and responsibilities of spouses are discussed.

Assemblywoman Neal:

That makes sense. I would not be against it. I was not saying they do not matter. It was just that the North Dakota bill was taken in whole and inserted into our Nevada statute. I would definitely be open to adding that there. Other states have.

Assemblywoman Cohen:

Given your answer to Assemblyman Pickard's question, I was thinking about family members and that these days more families are living together with many generations and branches of the family. I was thinking this should possibly be opened up a little more for other relatives besides spouses, parents, and children. Seeing your statement about wanting to make sure there is a workforce available, I think that kind of answered my question about why we might not want to open this up to your aunt and your cousin. I guess I wanted to make that statement and see if you had any other further comments about that.

Assemblywoman Neal:

Other states have had extensive discussion on the definition of a family member who could trigger the leave. When you get into grandmothers, grandfathers, and extended family, it actually casts a wider net. I think for this bill, if this policy moves out of this Committee, we need to see how it functions and then work on expanding it. I guess we could include a guardian, but it also included foster care, right? In my mind, a foster care situation could happen with a grandmother. I would probably only be willing to extend to a legal guardian of an actual child, which that would then insert a grandmother or grandparent who might be taking care of their daughter or son's children, and then they are eligible to trigger the leave. We need to talk about that more because I do not want it so wide, but I would be willing to add the language "domestic partner" and "legal guardian." Beyond that, I do not know if I find a comfort level there. I am more focused on that I want leave, but I also want a business to function properly. I do not want all these people walking out the door. In this 12-week provision, which is a long time, it does not speak to how often. If you took all 12 weeks, then that person is gone. That is a significant wage loss and you only can claim \$500 per employee. You also have to think about the financial implication upon the business who is dependent upon the active effort of the employee, and what they produce in that space.

Assemblyman Pickard:

I, too, have a concern about the "qualifying exigencies" not being defined. I do not know if they are defined under the federal law. I do think that is worthy of investigation. In response to Assemblywoman Cohen's point, I would be concerned if we expanded this beyond the same boundaries as the FMLA, if only because I am afraid that would create a difficulty for businesses determining under which standard they are working. Currently, under FMLA, it is unpaid leave, so it is a voluntary program. As I view it, and correct me if I am wrong, this is simply to incentivize businesses to give paid leave under the same set of circumstances as the federal law. That is just a comment generally.

Assemblywoman Benitez-Thompson:

Would your intent be that the employees in Nevada would be able to use their federal FMLA, which is just the job protection, not the wage piece, and then the Nevada paid medical leave simultaneously? I did not know if you had a preference one way or the other.

Assemblywoman Neal:

It was not envisioned to be simultaneous. If a leave program, sick leave, or another type of program exists, the typical use has been you exhaust one and pick up the other. It is not simultaneous. It is not double-dipping. You need to exhaust the first, then trigger the other.

Vice Chair Bustamante Adams:

I think that takes us into our second portion, which is lines 19 through 33 on page 1 and lines 1 through 26 on page 2 ([Exhibit C](#)). This portion talks about the total amount you can take, which may not exceed \$500 per employee, and the time period.

Assemblyman Pickard:

I am wondering how we came to a \$500 limit. The 12 weeks makes sense, if only to be consistent with FMLA. I am just wondering why we capped it at \$500 instead of some other number?

Assemblywoman Neal:

I thought about that and had concerns too. We took the "not exceed \$500" because we thought it was fair in terms of per employee per week and then thinking about the wage gaps or the persons who triggered the use. We calculated that \$500 over 12 weeks is \$6,000, and for each dollar that you pay, you can deduct from the wages. If you are going to do a deduction, a \$6,000 threshold is actually significant. I do not know if you would want more than that to be deducted by an employer off their MBT.

Assemblyman Pickard:

Where I was coming from was, at \$500 per person per week, we are looking at a little over \$15 per hour. After that the benefit drops away. My thought is if we want to broaden this, particularly if we are looking at southern Nevada, we have union jobs that are getting \$20 to \$40 per hour. This becomes a fairly small benefit to the employer. If we are trying as a policy to incentivize this, I am wondering if this might actually be too low of a threshold to incentivize the employers of higher-paying jobs to enter into the program.

Assemblywoman Neal:

I thought about that, and those are all good questions. We have 75 percent of your wages, which, at the time of my research, I thought was kind of high. In Connecticut, for example, 66 percent of the pay can be taken for the leave, and it was up to \$1,000 per week; however, they only allowed 6 weeks in a 12-month period of time, and they had a 7-day waiting period. When we think about that, do we also want to decrease the period of time? If we do 75 percent of your wages per week, I know that is kind of low, but if we go up to the \$1,000 per week, as Connecticut, then we need to consider maybe dropping down to 75 percent of the wage. It is not supposed to take the full effect of your paycheck. What it is

supposed to do is offset having zero dollars in your pocket when you want to take time off. It is better to have some than none. I guess we have to figure out what is fair. If you have a multitiered system based on income, then it is not really fair. There needs to be a broad standard that you walk in or you walk out of. I guess we could have further conversations around that because different states do have different thresholds.

Assemblyman Pickard:

I do not disagree at all with the reasoning. The logic makes sense to me. I was just thinking about this in terms of incentivizing more businesses to actually engage in this. My fear is if we are just really restricting the effectiveness of this to only those businesses that only pay lower paid incomes, are we missing an opportunity to broaden this. That was just the genesis of my thought.

Assemblywoman Neal:

I would be open to that conversation. There are several studies that we could go through, digest, and think through problems other states have encountered and how they arrived at a particular place. Certain states got a little worried when there were 200,000 people accessing leave. There was a concern about how to either shrink that number or try to make it a little bit more manageable because we are talking about workforce. We want to be supportive, but we do not want to be less productive in our business. I think we can come up with something. Let us think through it.

Assemblyman Pickard:

I could not agree more. Thank you.

Assemblywoman Spiegel:

I read the bill several times, and I could not figure out if there is a threshold on the size of the employer that this would apply to, or is it all employers? I know that in the bill it talks about the excise tax in NRS 363A.130 but I do not know how an employee would know whether or not their employer is paying that or not.

Vice Chair Bustamante Adams:

You may have missed the discussion about the MBT. Chair Neal, please repeat that because I think Assemblywoman Spiegel was not in the room when you stated the threshold for the MBT in section 2 for those that are over \$50,000 per quarter. Could you repeat that for her?

Assemblywoman Neal:

The way to look at the bill and the amendment ([Exhibit C](#)) is to separate it out. It really deals with two separate groups. Section 1 deals with mining companies and financial institutions, and the 2 percent that they pay for the MBT. Section 2 deals with all other businesses that are captured under the 1.475 percent rate, which is all taxable wages above \$50,000 per quarter. It breaks it down into those two groups.

Your question as to how would an employee know if they adopt this, there has to be an active effort to let employees know you have adopted the policy, and that it is something you are going to be taking the deduction on wages for. I uploaded two documents [([Exhibit H](#)) and ([Exhibit I](#))] showing what paid leave is and what is it about, to give you an example. North Dakota adopted what FMLA did. New Jersey created a fact sheet ([Exhibit I](#)) that they could put in a business, showing all the facts you should know and how it is triggered. It was a concern in California. Even when they did the study they found that about 44 percent of the state did not know they were eligible for it.

Vice Chair Bustamante Adams:

Are there any other questions on page 2, lines 17 through 21 ([Exhibit C](#)), the time period when an employer would have to allow an employee to take it? Seeing none, we will go to lines 37 through 45. In order to claim a deduction, the employer would have to do what is stated in section 1, subsection 6, paragraphs (a) and (b). Are there any questions on that part?

Assemblyman Flores:

I am looking at line 37. To claim a deduction pursuant to subsection 1, the employer must" Do we have a time frame by when they have to do that? Is there a requirement?

Assemblywoman Neal:

Mr. Nakamoto, correct me if I am wrong but I thought the MBT was quarterly.

Michael Nakamoto:

You are correct. The MBT is paid on a quarterly basis.

Assemblywoman Neal:

They would submit this quarterly, the same way they are doing the MBT, less the deduction for any kind of health care that they are paying, They would then add this in and deduct the wages, subtract the health care paid, subtract the family leave wage paid, and that would be quarterly.

Vice Chair Bustamante Adams:

Are there any other questions? [There were none.] Section 2 is the same as section 1, but applies to everybody outside of financial institutions and mining companies.

Assemblywoman Neal:

It is the same language.

Vice Chair Bustamante Adams:

Are there any questions on section 2? [There were none.] Are there any other outstanding questions?

Assemblyman Pickard:

I was curious to know why we deleted section 3 entirely?

Assemblywoman Neal:

I will probably say this in a politically incorrect way. The original draft of the bill allowed a credit against the MBT and the commerce tax. Put it this way, we had put a little too much sugar on top of the deduction and needed to scale that back. At no point do we want to allow a deduction of wages from the commerce tax. That is not even envisioned or considered. It would open up a whole other can of worms. We thought it would be easier to just basically cut all of that out and make sure the wages only applied to the MBT.

Assemblyman Pickard:

To confirm what I am hearing you say, if because the commerce tax is ultimately also a credit against the MBT, this will just be a parallel credit against the MBT.

Assemblywoman Neal:

Correct.

Vice Chair Bustamante Adams:

I will now take testimony from those in opposition to the proposed amendment for A.B. 266 ([Exhibit C](#)). Is there anyone in Las Vegas or Carson City in opposition? You have to be specific as to what it is you would change. Seeing no one, is there anyone speaking in support of A.B. 266? Seeing no one, I will now take testimony from those who are neutral on A.B. 266. Seeing no one, I think the Committee did a phenomenal job providing some good clarification, especially in section 1 on the employee portion. Thank you for your comments. I will now close the hearing on A.B. 266.

[[Exhibit J](#)] was presented but not discussed and is included as an exhibit for the meeting.]

[Assemblywoman Neal assumed the Chair.]

Chair Neal:

I will now open the hearing on Assembly Bill 294.

Assembly Bill 294: Requires a hosting platform to collect and remit room taxes under certain circumstances. (BDR 20-874)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

Today before you is Assembly Bill 294 for your consideration. As I have mentioned before, one of my focuses this session was to look at new trends in the marketplace that were not being captured within our tax structure. This bill is in regard to short-term rentals and their place within the new shared economy. This is not a conversation about whether you like the new concept. It is centered around whether it should be included in our revenue makeup. If the answer is yes, then how can we be consistent across the state?

I have asked my legislative aide, Irma Fernandez, to take the lead on this one. She has done an excellent job on all the research, so I am going to let her present the overview and the sections of the bill, then we will be happy to take any questions.

**Irma Fernandez, Legislative Aide for Assemblywoman Irene Bustamante Adams,
Assembly District No. 42:**

Before we dive into the bill and why we are bringing it forward, I would like to provide some history and context on hosting platforms for the Committee. Throughout this presentation I will refer to a few key terms: "hosting platforms," "residential units," "transient lodging," and "short-term rentals." Though the bill itself defines some of these terms, I would like to clarify what they are and what they are not.

A "hosting platform" is a person who, for a fee or other charge, provides an online platform through which an owner or lessee of a residential unit may advertise the rental of the residential unit, a room, or space within the residential unit, for the purposes of transient lodging, and conduct a transaction by which the owner or lessee rents the residential unit, a room, or space within the residential unit for the purposes of transient lodging. "Residential units" are a single-family residence, or an individual residential unit within a larger building, including, without limitation, an apartment, condominium, townhouse, or duplex. "Transient lodging" is defined as any structure or facility designed for occupancy by a person or persons who pay rent for dwelling, lodging, or sleeping purposes. Examples include resort hotels, hotels, motels, bed and breakfasts, apartment houses, vacation homes, inns, lodging houses, recreational vehicle parks, campgrounds, and timeshares when rented by anyone other than an owner, owner's guest, or exchange user. To clarify on timeshares, I would like the record to reflect that currently under *Nevada Revised Statutes* (NRS) 244.33565, a timeshare cannot be considered transient lodging unless the owner of the unit rents the unit to another person during the time when he or she is occupying the unit. In this case the tax would apply. "Short-term rentals" are defined as a guest stay that is 30 days or less [slide 2, ([Exhibit K](#))].

With these terms in mind, I would like to touch on the history of these hosting platforms [slide 3, ([Exhibit K](#))]. The history of vacation rental hosting platforms dates back to 1996 with the founding of VRBO.com, followed by the creation of HomeAway in 2005, and then Airbed and Breakfast, which would eventually become known as Airbnb in 2008. However, these hosting platforms did not truly penetrate the market until around 2011, with the popularity of Airbnb. By the end of 2012, Airbnb, overtook Hilton Hotels in number of nights booked, proving that this new form of transient lodging was here to stay. There have been plenty of players who have popped up in the market over the past few years, but the main players in the game are the aforementioned Airbnb—arguably the most popular of the platforms—HomeAway, VRBO, Tripping.com, Flipkey, Housetrip, and many more, including iterations of these websites in specific countries.

I do not know if any of you have ever booked one of these before, so I thought I would walk you through the process [slide 4, ([Exhibit K](#))]. The way these platforms work is fairly simple, and it is similar to booking a hotel online. In the case of Airbnb, you create a profile. You then search for the city and dates you would like to stay. I chose Carson City. Available rooms and homes pop up with prices, as well as information and pictures of the available locations. You can either decide to instantly book what you want through your profile on the website, or you can ask for permission to rent from the renter. They can either

approve or not approve this request, and then you are done. In this instance I used Airbnb. I usually communicated directly with the homeowner to receive my keys on the day I was supposed to arrive. I would then get a tour of the place I was staying in before the owner left the place for my use.

While this model of the sharing economy is putting extra income into the hands of homeowners across the globe, with residents in places like Arizona reporting \$4,800 per year in extra income based off renting their homes out, in Nevada we have a unique situation. The economy, though being diversified more and more each year, is still centered around the hotel and casino industry. As more and more residents decide to advertise their homes on hosting platforms, the number of people renting hotel rooms has declined. In New York, hotels experienced a 2.9 percent room-rate decline in 2016. In cities with a high concentration of hosting platforms, around 25 percent of the market, hotel occupancy rates are dropping, according to a recent study by Moody's Investor Service. Those percentage changes do not sound like much for an industry that operates in the billions of dollars category, but as more users join rental platforms due to their lower cost and lack of taxes imposed, these losses will continue for hotels, not to mention the loss in room service, food sales, fees, et cetera. In fact, as of 2016, 60 percent of hosting platform renters were millennials, defined as those between the ages of 18 and 35 years of age. When figuring out where to travel, I personally look at Airbnbs before hotels in the areas I am traveling to in order to save money and give myself a more unique experience in the cities and countries I am visiting. Millennials also travel more than any other group. Staying at a stranger's house is no longer a foreign concept, just as we now get into strangers' cars to move around.

That brings us to the purpose of the bill, which is uniformity. The idea behind this bill is to bring uniformity to transient lodging by folding this new technology into the tax structure. Adding what some call transient lodging taxes, occupancy taxes, or room taxes is not a new concept. As seen here [slide 5, ([Exhibit K](#))], nearly half the country already applies these same taxes in one form or another. Some are statewide, such as in the states of Arizona and North Carolina, while some are per county and city, such as California. In 2014, Airbnb began to collect and remit taxes in the City of San Francisco as cities, counties, and countries began to notice the prevalence of the sharing economy.

Taxes vary depending on different parts of the country. For instance, in Chicago, in addition to paying the hotel occupancy tax, users also have to pay a newly enacted tax that is specific to hosting platform usage. New Orleans, a city with a similar economy to Las Vegas, has a 4 percent hotel tax, plus a 50 cent per night tax for hosting platform rentals. The state of Arizona has a privilege sales tax of 5.5 percent, a county tax that varies from 0.28 percent to 6.5 percent, and an occupancy tax that varies from 1.5 percent to 6 percent.

Right now, in the state of Nevada, the only county that openly allows hosting platform rentals without the need of a permit is Washoe County, and that was done through an ordinance [slide 6, ([Exhibit K](#))]. In 2015, the Reno-Sparks Convention and Visitors Authority (RSCVA) entered into an agreement with Airbnb, specifically where Airbnb would collect the required room tax from rentals within Washoe County and directly

remit those taxes back to the RSCVA. This has resulted in \$500,000 in tax money being remitted back to the RSCVA. Airbnb does this on behalf of the host/owner of the residential unit. Other hosting platforms require that the tax be collected by the host/owner, and paid directly to the authority.

As for Clark County, things are a bit muddier. Unincorporated Clark County and Henderson do not allow for short-term rentals in residential areas, although it still takes place. The City of Las Vegas requires hosts to pay a fee for a business license to operate. The City of North Las Vegas does not have any kind of ordinance against short-term rentals. Whether regulated or not, it is happening throughout the state, with Airbnb alone reporting 3,900 hosts, even in areas where the practice is not permitted. In fact, according to information provided to us by Airbnb, Nevada hosts earned \$47 million in income last year alone, with \$35 million of that in the Las Vegas area and \$1.5 million in Henderson—a place where it is not even allowed.

I will now go into the bill. It is fairly short. There are two sections. Section 1 amends Chapter 244 of NRS by adding a new section that covers the following: It allows a county to require hosting platforms to collect taxes on transient rental lodging in that county. Hosting platforms collect these taxes on behalf of the owner/lessee of the property. Section 2 amends Chapter 268 of NRS by adding a new section that covers the following: If a local governing body adopts an ordinance allowing transient lodging, the hosting platform must remit all taxes back to the incorporated city it is currently in.

Assembly Bill 294 does not legalize the practice of short-term rentals throughout the state. This bill would allow for local control within each city and/or county to tax those who engage in the business of providing transient lodging from their homes. We did have a conversation with representatives from Airbnb today. There may need to be some clarification on some items, and we are willing to have that conversation. With all of this said, I am happy to answer any questions the Committee may have regarding A.B. 294.

Assemblywoman Spiegel:

If an entity that does not allow these hosting platforms and short-term rentals receives taxes through this bill, will they be able to then go back to, let us say Airbnb, and find out who is operating illegally in the city and close them down?

Irma Fernandez:

I am not sure I am understanding your question correctly.

Assemblywoman Spiegel:

Let me go backwards. We know the City of Henderson does not allow these short-term rentals, and through Airbnb, for instance, people are renting out their own homes. If this bill passes and Airbnb collects room tax for people who are illegally renting out their homes in Henderson, would Henderson, the State of Nevada, or some other entity have the ability to go back to Airbnb and find out who these homeowners are and close them down because they are operating illegally?

Irma Fernandez:

If this bill passes, it would still go to the local entities to say this is a legalized practice in order for them to take in the taxes. If you went to Airbnb right now, for example, and try to book a place in Henderson, it does not charge you any taxes right now, and it would not do so even if this bill were to pass unless the City of Henderson, or Clark County, were to say yes, the practice is now legal.

Assemblywoman Spiegel:

If the practice is not legal and no taxes are collected, there is nothing stopping the illegal practice from occurring, correct?

Irma Fernandez:

That is correct.

Assemblywoman Spiegel:

If it is legal in a jurisdiction and they are collecting taxes and that house is located in a homeowners' association (HOA) that does not allow short-term rentals in their covenants, conditions, and restrictions (CC&Rs), would that HOA have the ability to go back to Airbnb or the local jurisdiction to find out who was renting out their house in that neighborhood, so they can go in and have them stop?

Irma Fernandez:

In my conversations with Airbnb representatives, my understanding with HOAs is that they cannot give out specific information on homeowners who are renting a home because of the terms of service. If it were to be reported, then you could go to them and inform them this is not allowed in our HOA, and they might be able to work with you on removing that person's profile from the website. That was my understanding. If the practice were to be legalized, they would still have to listen to what their HOA said. If the HOA says you cannot have them, then it does not matter if it is legal throughout the rest of the county—they cannot have them. That is an agreement they made when they bought or rented a home in that association.

Assemblyman Pickard:

My concern is how this intersects with the common-interest communities and their CC&Rs. My fear is that this will be viewed as authorization to do so. Is there some concern that this would give some basis to go and claim that the state has superseded those requirements? I thought it was interesting that Assemblywoman Spiegel mentioned Henderson does not allow it. I just pulled up 14 houses in Henderson that are currently available on Airbnb. Obviously there is a disconnect somewhere. My concern is, can this explode on us and create a situation where they can use this as purported authorization to violate the CC&Rs?

Assemblywoman Bustamante Adams:

You point out a very good question because it is already taking place, even though it is not allowed in the City of Henderson or in Clark County. That is the point. No, there is no intention to violate the HOAs. If it is restricted, then there is no superseding. If it is restricted, it is restricted. That is the intention of the bill.

Irma Fernandez:

As I said, I spoke with the Airbnb government affairs people and asked them what they do when someone is violating a HOA rule that says a home cannot be rented out to other people, and they have this rental lodging occurring. They are aware of that, and they are trying really hard to work with these HOAs. The person I spoke with was telling me that in some areas, they are trying to do pilot programs within HOAs in which they have a deal with the HOA where they will take a portion of the service fee that Airbnb takes in. They would give a portion of the fee to the HOA in order to recognize their renters are in your area and they want to make this fair to you as well because you also have to deal with it. Maybe this will help the HOAs come to terms with possibly working out a deal if they are also benefiting from this. I know on Airbnb's end, they are trying. I did not speak to other government affairs people from other companies, but I know for certain Airbnb is trying, and if it were to be reported, they can take the measures to remove that profile from the website.

Assemblyman Pickard:

I recognize that this would go beyond the scope of this bill, but certainly because we would be pushing the enforcement issue and they are already dealing with enforcement issues, this would require more effort. I think sharing might be beneficial.

Assemblyman Kramer:

It seems to me like this comes under the same category as when I was a new officer in the U.S. Army. One of the rules you learned was you do not give an order you know will not be obeyed. It seems like what they have done is in Henderson, and other places perhaps, they have said do not do this, when in fact the whole market is going that direction. I cannot see then hauling these people into court and suing them for the amount of room tax they did not get and shutting this down. It seems like eventually Airbnb and such places will prevail, and suddenly it will become legal, like prohibition changed backwards and forwards.

My question is this: I know a fellow in Carson City, and Carson City has a room tax. He has a master bedroom with an outdoor exit. A couple of times per year, he will rent this room out. He has had people from all over the world rent that room. They will stay for 10 days, or something like that, and then they are gone. I think he has done this at least four times in the last several years. To me, that is a de minimis type activity. He is not doing it every weekend. He does not do it for a month at a time. The way this bill is written, if you do it one night, you are suddenly wrapped up into this, and you have done a transient lodging.

On a reasonableness basis, if the Carson City Visitors Bureau found out someone was doing this once in a great while, would they really go after them for the room tax? If it is remitted by Airbnb automatically, are they going to make you get a business license? At some point I think a person ought to be able to make an extra buck without having to pay hundreds of dollars in fees. To me, it destroys initiatives, and I do not like that. Tell me, what is likely to happen from the standpoint of a county or a city room tax department?

Irma Fernandez:

It would depend on what the local county would decide to do. If they said it would be legalized, then specifically Airbnb will remit the tax back to the local city or local county. If you look at the bottom, right-hand corner of slide 4 ([Exhibit K](#)), if they enacted the tax it would pop up there. The person would pay it. Airbnb takes all the money in and would take care of remitting that tax back. The host would just get their money, and that is pretty much it.

Assemblyman Kramer:

I guess my point is this: If you have a hotel in Carson City, the health department will inspect it and charge you a fee, you are going to be charged a business license fee annually, and you are going to be stuck with registering with the state for a business license. This is a small part of the taxes that would be involved in renting out a room for a night.

It is all these others that come onboard. You have mentioned this, and I understand where that comes from, that was not the question.

Will the Carson City Visitors Bureau, or whoever collects the room tax, suddenly report this to the county business license division? Are they going to come knock on your door and say you owe X amount of money? Are they then going to report you to the state, and suddenly you are out of compliance with the state? The next thing you know, you have hundreds of dollars in fees and penalties to pay for what could be one or two nights of stay. It just seems like an unequal balance here of somebody with the technology coming in and doing this, trying to make their rent payments and that sort of thing. Suddenly, you have to stop that idea, stop thinking about getting ahead. We are going to put you back in the box.

Assemblywoman Bustamante Adams:

I can see where you are going but according to the data we collected from Airbnb, in Nevada, especially up here in the north, the age of people renting out their homes is over 50, with the annual earnings typically about \$6,000. It is not \$100 or \$200 to collect once a month. It is a more sophisticated situation we are talking about.

Assemblyman Pickard:

What happens if Henderson bans any short-term rental and Airbnb remits to Henderson a room tax fee they are not prepared to accept?

Assemblywoman Bustamante Adams:

That would never happen. They would not remit the tax because they would not collect it. If you have an Airbnb in Henderson, where it is not allowed, they would not collect the tax.

Assemblyman Pickard:

I thought the response was that if we made this a statewide rule, that now Airbnb is supposed to remit the tax to the local jurisdiction, wherever that house is; it would be remitted to Henderson.

Assemblywoman Bustamante Adams:

Only if that city or town allowed it. That is why it is enabling language. That is why it does not have a two-thirds majority vote on it. There was a thought process that we would make it mandatory and that would put a two-thirds majority vote on it, so we did not want to go there. It may work in Incline Village, which seems to be a really popular place, but maybe it will not work in Henderson. It is enabling language for local government, for them to decide how they want to proceed. It is happening, but it is up to their discretion.

Assemblyman Pickard:

That is probably again outside the scope of this bill. Now that you have clarified that, it makes sense to me.

Assemblyman Kramer:

That is not what it says in section 1, subsection 1. It essentially says if there is transient lodging, then in paragraph (a), the board of county commissioners must require the hosting platform to report.

Assemblywoman Bustamante Adams:

If the city or county does decide?

Assemblyman Kramer:

If there is transient lodging taxed, not if they decide?

Assemblywoman Bustamante Adams:

No. Madam Chair, maybe you should have your legal person verify this, but that is not how I read the bill.

Chair Neal:

I do not have a legal person. Mr. Nakamoto, would you like to take a shot?

Michael Nakamoto, Deputy Fiscal Analyst:

I am not your legal counsel. My understanding of the bill, as it is drafted, is that the provision that requires the hosting platform to collect and remit the taxes to the local government is conditioned only on the board of county commissioners or the city authorizing the use of these properties for transient lodging. At least what I read in lines 3 and 4 of page 1, it says, ". . . if the board of county commissioners authorizes an

owner or lessee of a residential unit located in the county," or the city, as it would apply in section 2, "to rent the residential unit." If there is not an authorization from the board of county commissioners or the city that is given, then the tax would not be collected.

Assemblyman Kramer:

Perhaps the difference in understanding is in the definition of "residential unit." I look at motel rooms as a residential unit, and maybe they are not. Maybe they are motel rooms. Whereas this says "residential unit" and to me that means any place someone uses as a residence; which could be a house, a motel, or an apartment. Maybe it is the difference in understanding.

Michael Nakamoto:

In subsection 2 of both sections 1 and 2, there is a definition of "residential unit." For section 1, it is on page 2, lines 21 through 24, and for section 2 it is on page 3, lines 9 through 12. Maybe that will answer your question with respect to that.

Assemblyman Kramer:

Yes, it does.

Assemblywoman Cohen:

Getting back to the definition of "residential unit," what about mobile homes? Do any of these platforms ever use mobile homes? Are we leaving them out when we could be taxing them as well?

Assemblywoman Bustamante Adams:

I appreciate that question because that is what Airbnb's representative said. We may have to expand it a little more. There are other entities that consider residential unit to include even a tree house. I know that may sound foreign to people in the U.S., but it is not foreign in other countries. We may have to look at that. They will come and testify in the opposition, only because we may need clarification.

Assemblywoman Benitez-Thompson:

My question is on section 1, subsection 1 and section 2, section 1. I think asking this question is important because if either the cities or the county decide to affirmatively allow these and collect the tax, the bill says that the residential unit must be deemed to be engaged in the business of providing transient lodging. Along the lines of what Assemblyman Kramer asked, would the hosting platform then, on behalf of the owner or the lessee, be required to also have the local business license and the state business license since we are deeming them to be engaged in a business? Is your intent indeed to trigger all of the other requirements that come with being a business that is providing transient lodging?

Assemblywoman Bustamante Adams:

My preference would be that the local government determines that. If in the City of Henderson they do allow it and they would want a business license, then the entity would have to follow whatever the local government would request as a requirement. Maybe in Incline Village they would not. It would depend on the local government, giving them the breadth of determining what is right for their entity.

Assemblywoman Benitez-Thompson:

Are we giving the local governments, cities, or counties the discretion to determine applicability of their ordinances in this?

Assemblywoman Bustamante Adams:

That is correct.

Assemblywoman Benitez-Thompson:

If the City of Henderson said they were not going to do this, but the county says they are—it sounds like in the Las Vegas area, the City of Las Vegas has taken affirmative steps to do this. Would it be only the unincorporated part of the county that is outside of the cities that would be able to do this?

Assemblywoman Bustamante Adams:

That is correct.

Assemblywoman Benitez-Thompson:

For up north, there is an existing agreement between the RSCVA and Airbnb. If the county made the affirmative action to do this, would those taxes collected and remitted go through the normal channels and that agreement would be superseded? I do not believe right now NRS Chapter 268 or NRS Chapter 244 ultimately flow directly to the RSCVA. They flow to local governments and then get redistributed as we currently redistribute them.

Assemblywoman Bustamante Adams:

Washoe County is doing it now. You may want to ask Washoe County. Your fiscal person may be able to remind us how it works in Washoe County, but it would not change.

Michael Nakamoto:

My understanding of the procedure in Washoe County is that there is an agreement between the county and the Cities of Reno and Sparks whereby all room taxes are remitted to the RSCVA. The RSCVA then distributes the taxes to the appropriate jurisdictions imposing their rates. Depending on where it is, it would be either the state rates, county rates, and if applicable the city rates; but it is all handled by a central entity. In other jurisdictions in the state, there may be different arrangements whereby individual cities or the county itself may collect the tax, but that is going to vary by the jurisdiction.

Assemblywoman Bustamante Adams:

We are not proposing to change that structure. How the local government currently has it set up is the way we intend it to be applied.

Assemblywoman Spiegel:

Going back to the definition of "residential unit." In looking at Airbnb on the Internet, I see in Elko there is a 26-foot travel trailer that is available for rent that does not have a bathroom or a shower. The ad says you can go into the house. I am wondering how that would fit into the definition of a "residential unit"? Maybe we could modify the definition?

Assemblywoman Bustamante Adams:

I think that you are spot-on. I think it is too narrow and there are new creative ways that other things have been proposed. I agree with you.

Chair Neal:

Seeing no further questions, I will now take testimony from those in support of A.B. 294.

**David Cherry, Communications and Intergovernmental Relations Manager,
City of Henderson:**

We appreciate the thoughtful discussion here today to illuminate some of the issues the bill brings forth when it comes to exactly how cities and counties regulate this or choose not to regulate this activity or ban it. First off, I want to thank the bill sponsor for bringing this bill, and also for allowing it to be permissive as to whether a city wants to have something like an Airbnb operating in their community. We support this because we see the value that if we were to enact an ordinance that allows those activities, we would then be able to collect the taxes. A new source of revenue for the city would be welcome.

One thing I want to put on the record just to make clear: within the City of Henderson we do not have an ordinance that allows this, but there is a conditional-use permit that is available. Right now it is my understanding that there is only one section of the city where you could actually apply for that conditional-use permit. It happens to be in the area of Lake Las Vegas, for those who are familiar with the area. There is a very specific area of zoning there called "commercial tourist," and it is really just in that Lake Las Vegas area that anyone would be able to apply for and get a conditional-use permit. It is on a case-by-case basis. It requires going before our planning committee. There is a very specific way someone could possibly do a rental in Henderson, but in terms of an ordinance we do not have one. Thank you again for allowing me to put these remarks on the record. I am available for any questions.

Assemblyman Pickard:

To your knowledge, is Henderson contemplating allowing this? I ask this because most of Henderson falls under CC&Rs, and, again, my concern is are we creating a back door to violation of the CC&Rs.

David Cherry:

To my knowledge, at this time, they are not considering an ordinance. With your permission I will double-check that information and get back to you after the hearing.

Assemblyman Pickard:

Yes. Thank you.

Assemblywoman Benitez-Thompson:

With this activity not being allowed in the City of Henderson, how does the city handle it presently? There are rooms that are listed on the various sites. What is the city's official policy on the unofficial actions?

David Cherry:

To be honest with you, I am not part of our enforcement department that would enforce this. I believe it is a code enforcement or a business license enforcement. With your permission, as I do not want to give you inaccurate information, I can enquire about exactly how that is handled in the city and get back to you.

Assemblywoman Benitez-Thompson:

Yes, please, and for the Committee members as well.

David Cherry:

I would be happy to share that information.

Chair Neal:

Thank you for your testimony.

**Brian McAnallen, Government Affairs Manager, Office of Administrative Services,
City of Las Vegas:**

I would like to thank Assemblywoman Irene Bustamante Adams for bringing this bill forward and working with Airbnb and the other platform hosting sites in trying to come up with a solution to what is an evolving challenge for us all. I know Assemblywoman Swank also has a bill [[Assembly Bill 321](#)] dealing with data sharing that also relates to this particular issue, and there may be some other amendments which provide for some enforcement mechanisms as we move forward. I want to thank this Committee and the sponsors as we move forward in trying to address this issue. Down in Las Vegas we have Mary McElhone, the Business Licensing Manager for the City of Las Vegas, who has a great deal of expertise in this area. I am sure she can answer some of the technical questions as to how the City of Las Vegas handles this issue right now.

Assemblywoman Benitez-Thompson:

In the City of Las Vegas, is this a permissible activity?

Mary McElhone, Business License Manager, City of Las Vegas:

Yes. This is a permitted activity. While we do allow it in general, obviously it is not allowed in all master planned communities and HOAs. We do have our exceptions.

Assemblywoman Benitez-Thompson:

Do the individual homeowners register with you? Does the platform register with you? Does the HOA register with you?

Mary McElhone:

Right now, the hosting platforms are not sharing that information with us. Usually what happens is the homeowners will come forward and ask for licensing. During the licensing process, we check for zoning to make sure they are not in a master-planned community where it is excluded. We also ask for documentation from the HOAs to show it is a permissible use in that HOA.

Assemblywoman Benitez-Thompson:

Other than the business license, are they subject to other things such as health inspections, or is it just the business license fee?

Mary McElhone:

The way it works in the City of Las Vegas, when you come forward for licensing, the zoning is checked, just to make sure it is applicable. In certain situations they do have to apply for a special use permit, and there is a fee for that. We send out a code enforcement officer and they do an inspection. That is a free inspection. The inspection with the city does include fire extinguishers and fire alarms. It does check the hot water heater for proper temperature and electrical wiring in the house is checked to make sure it is safe. Pool barrier enclosures are checked, and a whole list of other things to make sure the unit is safe to rent.

Assemblywoman Benitez-Thompson:

It is not a business license, it is a special use permit, or do you need both?

Mary McElhone:

You definitely need the business license. The business license fee is \$500 annually. The special use permit is a one-time fee. How many bedrooms you have would determine whether you need a special-use permit. I believe it is \$1,020 to apply for that. That goes to the planning commission and is also heard before the city council. One of the biggest reasons why we do the special-use permit in certain situations is it allows the neighbors to have a voice in the process, whether they want this type of activity in their neighborhood. We have had a lot of problems with party houses, thus the need for the special-use permit.

Nick Vander Poel, representing City of Fernley:

I will echo Assemblyman Kramer's thoughts as it relates to the city because we do have, under unique circumstances, an event called Burning Man, and there is a need for housing before heading out to the Black Rock Desert. We appreciate the sponsor and Ms. Fernandez

in bringing this bill forward to allow a platform for such a thing. It does come into code enforcement and cost effectiveness, but as you know, every penny counts, and in the City of Fernley, if we can capture it, we will.

Chair Neal:

Thank you for your testimony. Do the members have any questions? Seeing none, we will move to those who are neutral on A.B. 294. Seeing no one, I will now take testimony from those who are speaking in opposition to A.B. 294.

Marcus Conklin, representing Airbnb, Incorporated:

I am with Strategies 360, representing Airbnb today as of just a couple hours ago. We are here in opposition, merely as a technicality. We are not opposed to the concept in the bill. It is a matter of there being some areas in the bill where we would like to see the language tightened up and clarified. Some of those have already been articulated by the Committee members: What is a residence? How broad does that category need to be in order to capture the types of activity that may happen, and some uniformity so that the tax is uniform. I am not talking about the rate, but the definition. It will affect whether taxes are uniform.

This is a very new topic area. We have had some very preliminary conversations with the bill sponsor and Ms. Fernandez, and we appreciate those very much. I think these have been very cordial conversations. We would like the opportunity to continue to have those and firm this up.

Assemblywoman Benitez-Thompson:

As far as you know, to this point, we are starting to see the trend for cities bringing this type of business onto the map. Does this seem to be in step with what we are seeing happen in other cities concerning the permissive language to a local government to begin the assessments?

Marcus Conklin:

I believe that is a fairly correct assessment. Every state goes about it a little differently, whether it is permissive or allowed uniformly across the state. There are some policy choices you are going to have to make here, but at least anecdotally, one of the things you struggle with, which I certainly can see in my time here, is the rapid advancing of these sorts of technological advances that make the world a different place. Many of the things the Committee is struggling with, with the questions you are asking today, are important to at least get on the record and grapple with; but this technology is coming. People are choosing to do more with their assets, and a home is an asset—just like a mobile home is an asset, just like a travel trailer might be, and just like some people may think their tent or their tree house might be.

As I was sitting here and thinking about this, listening to the questions, it is very similar to, in some respects, the conversation last week on robot cars. It is something that is coming. It is a wave of the future. We cannot necessarily articulate what types of things

may come up, but we have to be thinking faster and faster about the future, especially in a legislature that meets only once every two years. Technology is evolving so fast now that if you do not deal with it in advance, you are always going to be behind.

I commend Assemblywoman Bustamante Adams for bringing this bill. I commend your Committee for taking it up. I think it is definitely the right way to go. It is just a matter of working through the language and making sure we respond to everyone's questions. I know there were a number of questions here I do not even know the answer to, and I am happy to take those back to my client as well.

Assemblywoman Spiegel:

I have a question you are probably not going to know the answer to. I understand that when somebody is signing up to be a host, they are warranting that they have the right to rent out the space. Is there a process by which Airbnb would get involved if it turns out the person who is putting up the listing does not have the right to rent out the house, such as maybe a squatter who went in, found a house, and started renting it out?

Marcus Conklin:

Thank you for starting off with my own disclaimer. I sort of feel off the hook because I do not fully know the answer to that, but I am more than willing to go back to our client and get the answer.

Assemblywoman Spiegel:

Thank you. In looking at their platform I see also that they have other services that are available through their platform, which is not just residential housing and hosting. There was something with cohosting, or hosting experiences. I think with hosting experiences there is also an opportunity for someone to be paying for tours or other kinds of activities. I would like there to be some clarification that those would not be covered by this bill, or would they if it is not for housing but further ancillary services?

Marcus Conklin:

My initial read of this bill is that they would not be. This bill appears to speak exclusively to transient lodging, and transient lodging is connected to the definition of "residential unit." I would defer again and would be happy to reach out to my client to see if they have a different perspective on that.

Chair Neal:

Thank you for that. We have a question for Ms. McElhone.

Assemblyman Pickard:

Airbnb allows for rental of rooms, not the entire house. In the past I have seen that they are allowed to rent a room in an existing house. Would that require the conditional-use permit as well, if the owner was still occupying the residence?

Mary McElhone:

Right now it does not. There is no special-use permit required if it is owner-occupied. There is the potential that this could change in the future. That is something being looked into.

Assemblyman Flores:

You mentioned one of the concerns with the current language was the lack of uniformity in the tax. I think you said you wanted uniformity statewide. The only information I am requesting is what other states have that, where they have this flat tax. Could you provide me that information?

Marcus Conklin:

When I mentioned uniformity I am speaking predominantly to rules, not necessarily the tax being the same. The tax in Clark County is different than the tax in Washoe County, as it is different in other counties. You have to remember this is a platform. It is out in the cyber world. The more uniformity you create for it, the easier the platform can work. It does require us to understand how the platform works in order to best be able to create a statute that gives everyone the sense of comfort that everything is working the way it is supposed to. That is all that was meant.

Assemblyman Flores:

Thank you for that clarification.

Chair Neal:

Are there any further questions from the members of the Committee? Seeing none, I will call the presenters back to the table for final comments.

Irma Fernandez:

I wanted to answer a couple of questions that came up through others testifying. About 70 percent of places being rented out in Nevada are entire homes. That is pretty much the national average. It is more of a fifty-fifty split in bigger cities like London or Barcelona, but in Nevada it is 70 percent entire homes being rented out. About 27 percent are private space rentals, which could mean just a room, and 3 percent are shared rooms. I saw a listing today that offered someone to sleep on a couch for \$25.

Assemblyman Flores had a question about which states have the same tax. There are states that have a law that requires every county or city to take a tax from this transient lodging. These include states like Alabama, Arizona, Arkansas, Connecticut, Idaho, Kansas, Maine, North Carolina, Rhode Island, South Carolina, Utah, Vermont, and Washington. I know in Arizona, for example, there is a tax that everyone has to adhere to, but if you are in Maricopa County, you would probably have a higher tax than if you were in a rural county somewhere else in the state. It just depends on what your city and what your county is already taxing. There is kind of a uniform tax across the state, it just depends on what your city is doing. The taxes are remitted back to the cities, so it depends on where you are staying.

In review, A.B. 294 is a bill that does not mandate any city or county to legalize the practice of hosting platforms within their jurisdiction. As mentioned before, this bill exists to help local governments collect taxes from the usage of hosting platforms. I am happy to talk offline with anyone who has lingering questions. I thank the Committee for their time in hearing this bill.

[([Exhibit L](#)) was presented but not discussed and is included as an exhibit for the meeting.]

Chair Neal:

I will close the hearing on A.B. 294. I will now open the meeting for public comment, in Carson City or Las Vegas. [There was none.] We are adjourned [at 6:06 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 proposed amendment to Assembly Bill 266, presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit D](#) is a fiscal note from the 64th Legislative Assembly Of North Dakota, Senate Bill 2224, dated January 14, 2015, presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit E](#) is copy of a PowerPoint presentation titled "Paid Family Leave Market Research (Appendix)," dated July 13, 2015, presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit F](#) is a document titled "California's Paid Family Leave Law: Lessons from the First Decade," dated June 23, 2014, presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit G](#) is a document titled "Expecting Better: A State-by-State Analysis of Parental Leave Programs," presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit H](#) is a document titled "Employee Rights under the Family and Medical Leave Act," presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit I](#) is a document titled "The New Jersey Family Leave Act," presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit J](#) is a letter dated March 28, 2017, in support of Assembly Bill 266 to the members of the Assembly Committee on Taxation, authored by Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce.

[Exhibit K](#) is a copy of a PowerPoint presentation titled "A.B. 294," dated March 30, 2017, presented by Irma Fernandez, Legislative Aide for Assemblywoman Irene Bustamante Adams, Assembly District No. 42.

[Exhibit L](#) is written testimony in opposition to Assembly Bill 294, submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada.