

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

**Seventy-ninth Session
May 16, 2017**

The Senate Committee on Revenue and Economic Development was called to order by Chair Julia Ratti at 4:22 p.m. on Tuesday, May 16, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Julia Ratti, Chair
Senator Aaron D. Ford, Vice Chair
Senator David R. Parks
Senator Ben Kieckhefer
Senator Michael Roberson
Senator Heidi S. Gansert
Senator Patricia Farley

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Colleen Lennox, Committee Secretary
Tina Nguyen, Committee Manager
Lex Thompson, Committee Secretary

OTHERS PRESENT:

Brett Kandt, Chief Deputy Attorney General, Boards and Open Government Division, Office of the Attorney General
Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General
Michael Hackett, Nevada Tobacco Prevention Coalition; Nevada Public Health Association

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Samuel P. McMullen, Altria Client Services LLC
Steve Moran, Director, Business Enterprises and Economic Development,
Reno-Sparks Indian Colony

CHAIR RATTI:

We are going to start with the work sessions. I will turn it over to Joe Reel who will explain Assembly Bill (A.B.) 294.

ASSEMBLY BILL 294 (1st Reprint): Requires an accommodations facilitator to collect and remit room taxes under certain circumstances. (BDR 20-874)

JOE REEL (Deputy Fiscal Analyst):

We will start the work session with A.B. 294. This bill was sponsored by Assemblywoman Irene Bustamante Adams and heard in this Committee on May 4. I will read the work session document ([Exhibit C](#)).

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 294.

SENATOR FARLEY SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GANSERT AND KIECKHEFER VOTED NO.)

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CHAIR RATTI:

We will move on to A.B. 375.

ASSEMBLY BILL 375 (1st Reprint): Allows the imposition of certain taxes in a county to fund flood management projects of a flood management authority based on the recommendations of a flood control project needs committee and voter approval. (BDR S-473)

MR. REEL:

The next work session is on A.B. 375, sponsored by Assemblyman Michael C. Sprinkle and others and heard in this Committee on May 2. I will read the work session document ([Exhibit D](#)).

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CHAIR RATTI:

We will be accepting the second and third amendments. Most everything in amendment No. 1 is also in amendment No. 2. I have spoken to the sponsor about amendment No. 2.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 375.

SENATOR FARLEY SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS KIECKHEFER AND ROBERSON
VOTED NO.)

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CHAIR RATTI:

We will move on to A.B. 439.

ASSEMBLY BILL 439 (1st Reprint): Revises provisions governing taxation of the sale, storage, use or other consumption of certain property by a licensed veterinarian. (BDR 32-1017)

MR. REEL:

The next work session is on A.B. 439, sponsored by Assemblyman Nelson Araujo and others and heard in this Committee on May 11. I will read the work session document ([Exhibit E](#)).

SENATOR FORD MOVED TO DO PASS A.B. 439.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR RATTI:

We want a clarification on the record from our Legal Counsel, Bryan Fernley, on A.B. 294.

BRYAN FERNLEY (Counsel):

The Legal Division was asked to provide an explanation of the language for A.B. 294 relating to the circumstances under which an accommodations facilitator would be required to collect the room tax. The room tax would be required to be collected if a local government authorizes the rental of a residential unit or similar space.

If a local government authorizes such rentals, the language of the bill sets forth two criteria that must be satisfied before the facilitator would be required to collect the room tax. One, the facilitator will provide, for a fee, the service of brokering, coordinating, making available or otherwise arranging for the rental of a residential unit or similar space for the purpose of transient lodging. The second requirement is the facilitator has to collect the gross receipts for the rental of the unit or space on behalf of the owner, lessee, occupant or manager who is renting out the residential unit or similar space.

If the facilitator does not meet the second requirement, the facilitator is not required to collect the tax. Thus, any facilitator not collecting the charges for the rental of the unit or space on behalf of an owner, lessee, occupant or manager would not be required to collect the tax. This would mean that a facilitator just merely listing a unit or space for rent on a Website or through other means but who does not collect the charge for renting the unit would not be required to collect the room tax.

CHAIR RATTI:

We are going to open the hearing on A.B. 62.

ASSEMBLY BILL 62 (1st Reprint): Revises provisions relating to the supervision of manufacturers and wholesale dealers of tobacco products. (BDR 32-390)

BRETT KANDT (Chief Deputy Attorney General, Boards and Open Government Division, Office of the Attorney General):

I am here to present A.B. 62. With me today is Supervising Senior Deputy Attorney General, Hillary Bunker, who oversees our tobacco enforcement unit. Assembly Bill 62 revises various provisions of *Nevada Revised Statutes* (NRS) 370 and 370A which regulate the manufacture and sale of tobacco products in Nevada.

In 1998, Nevada entered into the Tobacco Master Settlement Agreement (MSA). It resolved health-related lawsuits between the Nation's largest tobacco manufacturers and 52 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. Assembly Bill 62 is brought for your consideration in furtherance of our diligent enforcement efforts. Ms. Bunker will provide further background on the MSA and review 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):

I have a brief presentation ([Exhibit F](#)) on an overview of the MSA. I will then explain A.B. 62.

The background of the MSA is shown on Slide 1. The question we get asked most frequently is when does the MSA end? There is no end date to the MSA. There is no sunset provision, so it is still going on. We received our most recent payment in April.

The terms and parties to the MSA are shown on Slide 2. As part of the terms, companies were prohibited from targeting youth. Also, the use of cartoons was banned. There was an limitation for things such as outdoor advertising of cigarettes. Brand name sponsorship and brand name merchandise were banned as well as free samples of cigarettes along with misrepresentation of the health consequences of smoking. Individuals are still permitted to file lawsuits against tobacco companies in any state. Originally, there were four participating manufacturers. Philip Morris and R.J. Reynolds are the only two remaining MSA companies.

Slide 3 shows both where revenues received from the MSA for Nevada go and nonparticipating manufacturers. Diligent enforcement, including Nevada's Tobacco Enforcement Unit, are explained on Slide 4. Diligent enforcement is not defined under the MSA, but some factors included in determining whether a state was diligent or not are: how the Attorney General office works with a revenue department on tobacco issues; reliable accounting figures; allocating resources to enforcement; enacting legislation; working with the National Association of Attorneys General; and other efforts. Our Tobacco Enforcement Unit has checks and balances ensuring accurate reporting of numbers for

companies on what their sales are in the State. We perform background checks for businesses wishing to operate in the State. We also represent the department on appeals of seized product.

In 1998, Nevada entered into the Master Service Agreement. The MSA resolved health-related lawsuits between the Nation's largest tobacco manufacturers in 52 U.S. states and territories. Under the MSA, participating tobacco manufacturers make annual payments to the State of Nevada of approximately \$40 million a year. The annual tobacco payments go to the Fund for a Healthy Nevada and the Kenny Guinn Millennium Scholarship Program. Receipt of future tobacco payments is vital to the continued existence for both of these programs.

The cornerstone of NRS 370A is the requirement that cigarette manufacturers sign on to the MSA and make annual payments. If a manufacturer does not sign the MSA, that manufacturer is required to deposit funds into an escrow account for each cigarette on which State excise tax is owed. These escrow funds are intended to provide a source of recovery in the event Nevada prevails in a health-related lawsuit against the manufacturer.

Every Legislative Session, the Office of the Attorney General (OAG) submits a bill related to tobacco enforcement. Our office and the Department of Taxation are tasked with diligent enforcement of the MSA. The consequences of not having diligent enforcement, determined on an annual basis, and not having strong enforcement statutes puts the entire MSA payment Nevada receives in jeopardy.

As referred to in written testimony ([Exhibit G](#)), Nevada signed a separate settlement agreement with 23 other states and various tobacco manufacturers concerning diligent enforcement of the MSA. Because of this agreement, Nevada did not have to participate in arbitration proceedings to determine its diligence or enforcing of the MSA for calendar years 2003 through 2014. This was only for those years. Because there is no sunset provision on the MSA, the question of diligence will be determined every year ongoing.

One of the factors considered by the arbitration panels in determining diligence is whether a state enacted legislation toward enforcing and strengthening its enforcement efforts. Accordingly, it is necessary for our State to continually

increase its enforcement efforts and ensure our statutes are amended for the strongest enforcement of tobacco entities operating in the State.

As a term of the agreement with the 23 other states and various tobacco manufacturers, the parties will be exchanging documents with each other and submitting them to a data clearinghouse. Many of the necessary statutes are in place to comply with the terms of the settlement agreement. However, there are a few areas this bill seeks to revise based on ongoing negotiation of the settlement agreement.

[Exhibit G](#) addresses what [A.B. 62](#) does. To further clarify section 9, the State's intent with this statute is related to assignment of monies in the qualified escrow fund only. If monies have been released under NRS 370A.150, they would not be subject to assignment. Additionally, if monies are for any reason not in a qualified escrow fund, they cannot be assigned under NRS 370A.153.

In [Exhibit G](#), in reference to section 1.1, we are also clarifying the cigarette vending machine operator licensing requirements. 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.

MICHAEL HACKETT (Nevada Tobacco Prevention Coalition; Nevada Public Health Association):

We supported [A.B. 62](#) in the Assembly. We want to be on the record in this Committee in support as well. This bill will improve enforcement and accountability through the OAG with the MSA. It will ensure continued compliance by the State with the terms of that agreement. The MSA money is the source of funding for the Fund for Healthy Nevada which in turn funds several important public health programs important to our community.

SAMUEL P. McMULLEN (Altria Client Services LLC): We have always been here regarding the settlement in 1998 our company agreed to. We always appreciate helping and cooperating with the OAG as it looks at the diligent enterprise in Nevada to make sure the money is collected. There is an issue in the settlement about making sure it is done diligently. The OAG is kind enough to get these amendments to us to make sure that we are comfortable with them, which we are.

We are in favor of these amendments with the two primary goals as stated, which is functionally the bonding of nonparticipating manufacturers and the establishment of the data clearinghouse. It is a work in progress because it is a complicated exercise. The OAG has done a good job of trying to stay ahead of that and to be diligent. We really appreciate and support that effort. We will help in any way possible. It has been almost 20 years since the Settlement Agreement, and it provides good revenues for Nevada, which is a positive thing.

STEVE MORAN (Director, Business Enterprises and Economic Development, Reno-Sparks Indian Colony):

Until recently, we were very concerned with section 9 of A.B. 62. We felt it could be interpreted to prevent the tribes from having money released from escrow as is allowed under Nevada law. We were also concerned the State could claw back some of the monies released from escrow. After speaking with the OAG, we received assurances it is not the intent of the bill. The OAG has pledged to submit a strongly worded letter to that extent. It makes it abundantly clear it is not the intent of the bill. With that, we testify neutral on this bill.

CHAIR RATTI:

Just for clarification for the Committee's purposes, there was an amendment submitted under Marcus Conklin's name. With your testimony, there is no need to process that amendment today?

MR. MORAN:
No.

SENATOR FORD MOVED TO DO PASS A.B. 62.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR RATTI:

Seeing no public comment, we are adjourned at 4:57 p.m.

RESPECTFULLY SUBMITTED:

Lex Thompson,
Committee Secretary

APPROVED BY:

Senator Julia Ratti, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	2		Attendance Roster
A.B. 294	C	6	Joe Reel	Work Session Document
A.B. 375	D	16	Joe Reel	Work Session Document
A.B. 439	E	1	Joe Reel	Work Session Document
A.B. 62	F	5	Hillary A. Bunker / Office of the Attorney General	Presentation
A.B. 62	G	3	Brett Kandt / Office of the Attorney General	Written Testimony