

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

**Eightieth Session  
May 7, 2019**

The Committee on Taxation was called to order by Chair Dina Neal at 4:53 p.m. on Tuesday, May 7, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Berg Hall Conference Room, Great Basin College, 1500 College Parkway, Elko, 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/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Dina Neal, Chair  
Assemblywoman Ellen B. Spiegel, Vice Chair  
Assemblywoman Shea Backus  
Assemblywoman Teresa Benitez-Thompson  
Assemblywoman Lesley E. Cohen  
Assemblyman Chris Edwards  
Assemblyman Edgar Flores  
Assemblyman Gregory T. Hafen II  
Assemblyman Al Kramer  
Assemblywoman Heidi Swank

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Susie Martinez (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:**

Dagny Stapleton, Executive Director, Nevada Association of Counties  
Cindy Arnold, Tax Program Supervisor, Motor Carrier Division, Department of Motor Vehicles  
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association  
Mary C. Walker, representing Carson City, Douglas County, Lyon County, and Storey County  
Alexis Motarex, Government Affairs Manager, Nevada Chapter, The Associated General Contractors of America, Inc.  
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association  
Nick Vander Poel, representing City of Fernley  
Molly Ellery, representing Nevada Bighorns Unlimited  
Daniel Pierrott, representing Nevada Builders Alliance  
Jon S. Erb, Transportation Engineering Manager, Douglas County Public Works  
Robert K. Stokes, County Manager, Elko County  
Robert L. Crowell, Mayor, Carson City  
Pete Olsen, Commissioner, District 2, Churchill County  
Marshall McBride, Chairman, Board of Commissioners, Storey County  
Austin Osborne, Planning Director, Storey County  
Tim Dahl, Director, Nye County Public Works  
Jim French, Chairman, Board of Commissioners, Humboldt County  
Marcos Lopez, Field Director, Americans for Prosperity Nevada  
Eddie Diaz, Community Engagement Director, the LIBRE Initiative  
Luis Vega, Field Director II Nevada, Concerned Veterans for America  
Janine Hansen, State President, Nevada Families for Freedom  
Marvin Weissberger, Private Citizen, Genoa, Nevada  
Wiselet Rouzard, Community Engagement, Americans for Prosperity Nevada  
Karen Stoll, Tax Program Supervisor II, Motor Carrier Division, Department of Motor Vehicles  
Melanie Young, Executive Director, Department of Taxation  
Shellie Hughes, Chief Deputy Executive Director, Department of Taxation  
Aaron Ford, Attorney General  
Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General  
Michael Hackett, representing Nevada Tobacco Prevention Coalition; and Nevada Public Health Association  
Barbara Smith Campbell, representing Core-Mark International, Inc.  
Dan R. Reaser, representing McLane Company, Inc.  
Peter Krueger, representing Cigar Association of America

**Chair Neal:**

[Roll was taken and Committee rules and protocol were reviewed.] I will open the hearing on Senate Bill 48 (1st Reprint). We are going to have a presentation on the International Fuel Tax Agreement before we get into the bill—for the education of new Committee members.

**Senate Bill 48 (1st Reprint): Authorizes certain local governments to increase diesel taxes under certain circumstances. (BDR 32-481)**

**Dagny Stapleton, Executive Director, Nevada Association of Counties:**

With me today is Cindy Arnold from the Department of Motor Vehicles (DMV). She will be giving the presentation on the International Fuel Tax Agreement (IFTA).

**Cindy Arnold, Tax Program Supervisor, Motor Carrier Division, Department of Motor Vehicles:**

The Motor Carrier Division of the DMV administers IFTA. What is IFTA? IFTA is the International Fuel Tax Agreement between the 48 contiguous United States and ten Canadian provinces for the uniform collection and distribution of fuel use tax revenues [page 2, [\(Exhibit C\)](#)].

Trucking companies, also known as motor carriers, filed fuel use tax returns in every jurisdiction where travel was accrued back in the old days. Post-IFTA, motor carriers file one tax return with their base jurisdiction at the end of each quarter, showing the miles traveled and fuel purchased during that period, and are netted through an IFTA clearinghouse [page 3, [\(Exhibit C\)](#)]. Page 4 shows the IFTA jurisdictions.

For IFTA fuel members, the agreement means increased taxpayer compliance and uninterrupted flow of tax revenues and streamlined tracking and reporting requirements for both carriers and jurisdictions [page 5]. It makes fuel tax collections much easier in Nevada. It still enables jurisdictions to set their own tax rates according to individual road construction needs, and notify other jurisdictions of the tax rate for each quarter so those members can collect the tax at the proper rates for each jurisdiction. Nevada's participation in the IFTA program means the motor carrier deals with a single jurisdiction for fuel use tax licensing and reporting as well as auditing requirements [page 6].

This makes for a better accounting of taxes for each jurisdiction, and it simplifies tax reporting and the licensing process for both the motor carriers and the jurisdictions [page 7]. What does IFTA do for Nevada? It is one set of tax forms to complete in the base jurisdiction rather than a separate tax return for each jurisdiction in which an IFTA licensee operates. It is a single fuel use tax license which authorizes a licensee's vehicles to travel in all 58 jurisdictions. It is also a single audit instead of an audit in each jurisdiction in which a licensee operates [page 8].

How does indexing affect IFTA carriers? Local taxes, including indexing, are not included through IFTA. Therefore, credit of the tax for fuel consumed outside of Nevada is not covered. *Nevada Revised Statutes* (NRS) 373.083 provides for a reimbursement of the local tax paid when fuel is consumed outside of Nevada. The total of all eligible reimbursements cannot exceed 20 percent of the tax collected in a given county [page 9, ([Exhibit C](#))].

County tax on diesel enables counties with a population under 100,000 to obtain additional funding for road projects specific to their needs. It provides a mechanism for eligible IFTA carriers to receive a reimbursement of the county tax consumed outside of Nevada. It also provides an opportunity to fund some truck parking in counties with diesel sales in excess of 10 million gallons [page 10]. Are there any questions on IFTA?

**Assemblyman Edwards:**

This is the first time I have heard of this. Can you give an example of how much tax for fuel is collected, how much we give back, and are we doing this correctly for the state of Nevada?

**Cindy Arnold:**

Do you mean on indexing or state fuel taxes?

**Assemblyman Edwards:**

On IFTA.

**Cindy Arnold:**

There are millions of gallons and millions of dollars transmitted back and forth every month to the other IFTA jurisdictions. If a motor carrier buys his fuel in a border gas station in Nevada, travels into California, and uses that fuel up and down the roads in California, he is going to report that he used all those miles and wear and tear on the roads in California. We collected his fuel tax at the pump here in Nevada, so on the IFTA tax return he does quarterly, he is going to report that he drove X amount of miles in California and paid X amount of dollars of fuel taxes here in Nevada. Nevada will transmit that fuel tax to California for their roads. Even though the fuel was purchased in Nevada, he used it in California.

**Assemblyman Edwards:**

Is this separate from the sales tax and any county tax?

**Cindy Arnold:**

Yes. This is the state fuel tax. County indexing is based on the county tax, federal fuel tax is what gets delivered to the federal government, and the county indexing stays within the county. The state tax is collected and sent to wherever the actual fuel was used. Here in Nevada—being close to California, Arizona, Utah, Idaho, and Oregon—they could buy their fuel in border states. We collect the state tax here, but if they are using it in those jurisdictions, we send it to them.

**Assemblyman Edwards:**

That is one heck of an honor system.

**Cindy Arnold:**

We do audit our carriers. As part of the IFTA program, we are responsible to audit our carriers every year. We audit 3 percent of all carriers every year. All 58 jurisdictions do that. We go after them and look for it. We have a very good compliance program.

**Chair Neal:**

Are there any other questions on the IFTA presentation? [There were none.] We will go ahead and get into Senate Bill 48 (1st Reprint).

**Dagny Stapleton:**

As I am presenting the bill today, I will talk about how IFTA fits in. Senate Bill 48 (1st Reprint) is one of the bill draft requests that NACO [Nevada Association of Counties] has submitted this legislative session. Our members, including all 17 of Nevada's counties, unanimously supported putting this legislation forward. Its purpose is to help provide critical funding for road construction and maintenance in Nevada's rural counties. Counties in Nevada own and maintain over 65 percent of the roads in our state.

Currently for some of Nevada's rural counties, dedicated funding streams for roads meet only a fraction of the need for county road repairs, and the condition of some county road infrastructure is dire. In a 2018 study by the American Society of Civil Engineers, Nevada's roads were given an overall grade of C, meaning that the average overall condition of Nevada's roads was only fair. However, the report noted that much of the road repair backlog is actually in Nevada's rural counties where roads are comparatively worse. Our organization regularly hears stories from our rural county members about the condition of rural roads and the gap between available revenue, capital projects, and the need.

You will hear directly from a handful of county representatives who are here to testify in favor of this bill. They can elaborate on what this looks like in their individual counties, but I want to highlight a few examples. In Lyon County, the cost to fix their worst roads—those rated as failing with a grade of F—is \$33 million, yet available road maintenance funds are only \$2 million per year. Other rural counties are discussing removing existing street pavement and replacing it with dirt roads, which are far cheaper to maintain. In Elko County, there is a \$2 million annual shortfall in their road maintenance budget even after a locally approved gasoline tax increase.

Without the ability to raise additional revenue to address roads in rural Nevada, the gap in some rural counties between needed road repairs and available funds will only grow. As roads continue to deteriorate, the cost of repairs will increase along with the impacts to economic development and public safety. Part of the reason that rural counties do not have the revenue needed to fund local road repairs is they currently do not have the authority to

impose or collect a local tax on diesel fuel. Counties do have the authority to enact a 5-cent tax on regular gasoline, which is distributed according to the Regional Transportation Commission distribution in each county; however, the Legislature has never allowed rural county commissions to enact a corresponding 5-cent diesel tax. What that means is diesel-powered cars and trucks that are fueled up and driven in rural counties do not contribute funding to local roads.

The same is not true for urban counties, as Clark County and Washoe County have enacted fuel tax indexing on a portion of their gasoline taxes, and this indexing includes diesel. So as a result, Nevada's urban counties do collect taxes from diesel vehicles to fund local roads.

What S.B. 48 (R1) would do, very simply, is allow rural county commissions to vote to levy a 5-cent diesel tax in their counties so that their counties could fund needed improvements to local county roads. Any such vote would require a two-thirds vote of the county commission members, or alternatively S.B. 48 (R1) would allow a county commission to put a question on the ballot, asking voters in a county whether they would like to approve the 5-cent diesel tax.

Another important provision in the bill would require in any county that chooses and subsequently then sells greater than 10 million gallons of diesel, up to 10 percent of the total diesel proceeds in the county would be sent to the Department of Transportation (NDOT) to pay for the construction of commercial truck parking along our state highways. Truck parking would help ensure that truckers have safe rest areas away from residential neighborhoods. This is an innovative solution to the problem of the availability of truck parking. Currently throughout the state, commercial trucks are often forced to park on parkways and in residential areas during their rest periods, so this legislation would also be a big step forward in rectifying that issue.

Section 2 of the bill defines truck parking. If this bill were enacted, Nevada would be the first state in the Union to provide public funding for truck parking. Section 3 of the bill allows counties with populations under 100,000—all 15 of Nevada's rural counties—to raise a 5-cent tax on diesel, either through a two-thirds vote of the board of county commissioners or through a vote of the people. Section 3, subsections 4 and 5, provide details on adopting and capping the tax at 5 cents, as well as the beginning date for collection of the tax if it is raised. Section 3, subsection 6 includes an important provision which exempts red diesel from the proposed tax. Red diesel is diesel fuel that has been dyed red to indicate that it is tax-exempt. It is used for certain nontaxable activities related to agriculture and mining.

Section 5 of S.B. 48 (R1) includes truck parking into those projects that are approved to be constructed using fuel taxes. Sections 6 through 8 of the bill include the language regarding the truck parking provisions of the bill and IFTA. As you just heard, IFTA is a complicated system that allows interstate truckers to be reimbursed for fuel taxes paid in one state if they drive into and use the fuel in another state. It is complicated but IFTA is very important.

It is through IFTA that the dollars for truck parking would be taken out of the revenues potentially received from any county that raised the tax on diesel. The way that mechanism in the bill would work is that for any county that enacts the tax and sells over 10 million gallons of diesel in a year, up to 10 percent of those revenues would be provided to NDOT to put towards truck parking and would be set aside in a special account for that purpose.

Sections 9 through 14 of the bill provide that this new revenue would be administered, allocated, distributed, and used in the same manner as the existing 5-cent county option tax on gasoline. This would ensure that cities get a distribution of the tax raised in the same manner that they do now for the local gasoline taxes.

We have provided a few exhibits that are up on NELIS [Nevada Electronic Legislative Information System]. The first document includes resolutions and letters in support of S.B. 48 (R1) from a number of Nevada's rural counties ([Exhibit D](#)). The second is a spreadsheet that shows, by county, how much tax revenue would be generated if the county raised the 5-cent diesel tax ([Exhibit E](#)). You can see which counties would be projected to trigger that 10 million gallons. The column that says "LESS: IFTA/TRUCK PARKING," that is the estimated up to 10 percent what the dollar amount would be that would go to truck parking annually for those counties.

This bill is a priority for our rural members. As you can see from the exhibit with the county resolutions and letters ([Exhibit D](#)), county commissions individually have discussed the potential benefits to them were the bill to pass, and they have made official statements in support. At this point we have 12 rural counties either represented here today in person, or who sent letters or resolutions in support. I also want to add Lander County officially on the record. They tried to make it to the hearing today but could not make the drive. Their county manager wanted to be here, so he asked me to put on the record their commission and their county are also in full support of S.B. 48 (R1). I would be happy to take any questions.

**Assemblyman Hafen:**

I completely understand the need for this. The roads continue to cost more and more, and we need some mechanism to pay for that. My concern is that we, as a legislative body, continue to make the cost of building these public works projects, specifically roads, more and more expensive, specifically in the rural counties, by having zone adders somewhere between 5 percent and 20 percent more than what it costs in the urban areas. I wish there was a way we could make our projects more efficient in the rural counties by removing that zone adder because we would be able to get more roads done.

I understand that is not what we are here to talk about today—today is the 5 cents. Could you clarify the 10 million gallons? Would the revenue go to truck stops? Are there any areas for truck parking that are currently paved throughout most of the rural counties?

**Dagny Stapleton:**

Your question was currently regarding existing truck parking, and whether there is any paved parking. I do not know the answer to that. I know Paul Enos from the Nevada Trucking Association is going to come up and I am sure he can answer that question.

**Assemblywoman Backus:**

If you take a look at section 3, subsection 6, where it pertains to the dyed diesel fuel [page 4, line 24]. I just need some clarity. From your testimony and the legal digest, it is excluding the dyed fuels; however, when you do look at those that are described in NRS 366.200, it does include those. I just want to ensure that is correct. It is, in fact, excluding the dyed fuel.

**Dagny Stapleton:**

We went back and forth on this with the Legal Division, Legislative Counsel Bureau (LCB) to confirm that it does, in fact, exempt the red fuel, which is our intent. I think you are reading it correctly, that it does, and I would have to defer to the Legal Division or LCB on the specifics.

**Assemblywoman Swank:**

To ensure that this is very clear on the record, I want to reiterate that without this bill, we would be denying the counties the ability to decide for themselves if they would like to impose this tax, and that this could happen in one of two ways—either through a two-thirds majority of the board of county commissioners or through a majority of the registered voters voting for it. So if we do not pass this bill, we are denying them the ability to do this. We are not imposing it, but will actually not let them do something they need.

**Dagny Stapleton:**

That is absolutely correct. This bill provides the local authority to the counties to do this. This is not a tax bill or an increase you are voting on. It would be the local jurisdictions that would be imposing the tax. You are only creating the authority in statute. This mirrors existing authority for all rural counties to raise 5 cents on gasoline. There is already a clear precedent and a similar authority with the 5 cents for gasoline. This would just be adding that authority for diesel.

**Assemblywoman Swank:**

So voting against this bill means you would be denying the counties the ability to do this.

**Dagny Stapleton:**

Yes, you would be denying the counties the ability to have the authority to raise the tax.

**Assemblywoman Spiegel:**

As I look at the bill, and then the numbers and estimates on the spreadsheet ([Exhibit E](#)) of what would go toward the truck parking, in looking at Pershing County and \$60,384 in a year, if that is not enough money for them to actually use, what happens to that money? Does it stay with NDOT, or does it go somewhere else? How is it accounted for?



**Dagny Stapleton:**

These monies would go into the regional street and highway fund for each county, and it could only be used for the projects that are outlined in the bill. There is a list of types of projects that can be done with those tax dollars. What we hear from our members is that fund is so short that in addition to roads and the other types of transportation-related projects that it could be used for, it is hard to imagine a county ever having a surplus in that fund. I will find the reference for you.

**Chair Neal:**

I know this is going to be triggered when a county is over 10 million gallons. What if they are traveling through their county to a county that has the 10 million gallons; will they be able to apply for reimbursement?

**Cindy Arnold:**

Currently there is a mechanism in place in NRS Chapter 373 that allows for the reimbursement of fuel taxes used outside the county. For those reimbursements they cannot exceed 20 percent of the tax that was collected in the given county, but they are available.

**Chair Neal:**

Give me a real-life example. If we were looking at the chart ([Exhibit E](#)), we know Pershing County is eligible for the 10 million gallons because they are at roughly 12 million gallons sold. Say they travel through Nye County, and they are at 8 million gallons. Tell me how the calculation would work. If it is 20 percent, what would Nye County get?

**Cindy Arnold:**

They would not get anything. It is for fuel purchased inside the county and used outside the state. There would not be any reimbursement within each county—IFTA users only get that reimbursement if they buy it in Pershing County and then leave the state.

**Chair Neal:**

You struck out indexing. I want you to explain for the Committee so we have it on the record. Why are we distinguishing the two funds [page 6, line 39, S.B. 48 (R1)]?

**Dagny Stapleton:**

The authority to raise fuel tax proposed in S.B. 48 (R1) is not indexing. It is a straight 5 cents on diesel. That may be why we struck out indexing. That would be another question I would defer to the Legal Division.

**Chair Neal:**

I knew it was a separation because you are not indexing. Just for clarity, when someone talks about the diesel tax, if the 5 cents goes through, this is the local fuel tax fund but not the fuel tax indexing fund because you did not change the statute. It says it still goes under NRS 373.087. I just wanted you to state the reason why you had to separate it and why you had to delineate it.

**Dagny Stapleton:**

I cannot answer that question. The money from this tax goes into the regional street and highway fund. I will look into this further and see if I can figure it out. I will follow up.

I would like to follow up on Assemblywoman Spiegel's question. If you look at section 5, subsection 2 of the bill, there is a list of all of the possible projects that can be paid for using this fund.

**Chair Neal:**

Members, do you have any additional questions? [There were none.] I will now take testimony from those in support of S.B. 48 (R1).

**Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:**

We are here today to support S.B. 48 (R1) for a couple of reasons. Number 1, we think fuel tax is the most efficient way to pay for our roads. It is something that we have supported before. We are supporting this nationally. We think that when you look at how much it costs government to collect and distribute the fuel tax, you are looking at 97 cents per dollar that ends up going back to the roads or highway fund purposes, so we like fuel tax. We think that this is one of the best mechanisms that currently exist to pay for this infrastructure.

In terms of IFTA—I know that is what makes this very complicated—I want to ensure there is an understanding. Nevada gets money from truckers who do not buy a drop of fuel here but travel through this state. We benefit as much from this interstate agreement as the other states do when we send them money. There is something neat about that. We did have that refund mechanism in there because in 2013 we realized there was an issue in Washoe County, when they had indexed their fund, where you were putting your Nevada carriers at a disadvantage when they were buying fuel in Washoe County and traveling outside the state, so that refund mechanism went in place in 2013. That is something that is going to continue in this bill.

The 10-million-gallon mechanism is administratively complex and we did not want to burden the counties that are not selling that much fuel to my folks. That is why we put that threshold in there. Mostly on the Interstate 80 corridor is where we have a tremendous amount of issues with truck parking. We have had the issues of late because we now have an electronic logging device mandate. There are no longer paper logs the drivers fill out. They cannot fudge those. Compliance is electronic and it is mandatory. A driver has 11 hours to be behind the wheel, then they need to find a place to park and rest for 10 hours. So having more truck parking is absolutely essential.

In the winter we see trucks backed up all over the Interstate 80 corridor, and yes, we do have quite a few paved truck spots, but we need more. We also need lighting. Lighting is another issue that helps provide for the safety of that driver who is sleeping, to ensure no harm is going to come to them in a well-lit area. Those are some of the things this revenue could also go to with these truck parking spaces.

In terms of the truck parking, we have been working on this with NDOT for quite a long time. They are right in the middle of a truck parking study. Today they had a freight advisory committee I had to miss to be here, where they have identified certain places on the Interstate 80 corridor, in these same counties where this money would go, where they would invest in truck parking. This will not be a case where money will be sitting with no plan—a plan is being developed right now. I think we have a perfect storm in terms of the new mandate from the federal government that is making truck parking shortages, and it is not just throughout rural Nevada; it is throughout the entire state. I have heard from former Clark County Commissioner Susan Brager, North Las Vegas Mayor John Lee, Las Vegas Mayor Carolyn Goodman, and Clark County Commissioner Marilyn Kirkpatrick. Truck parking is a huge issue down in Clark County. It is a big issue here, and I think this is a great step to address it. I appreciate the consideration of this Committee.

**Chair Neal:**

Assemblyman Edwards, do you have any questions for Mr. Enos?

**Assemblyman Edwards:**

No.

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

Senate Bill 48 (1st Reprint) enables a rural board of county commissioners to enact up to a 5-cent diesel tax by either a two-thirds majority vote of their members, or the board can decide to take the diesel tax to a vote of the people at a general election. The two-thirds vote is consistent with the Legislature's two-thirds requirement for new state taxes. Senate Bill 48 (1st Reprint) does not require a two-thirds vote of the Legislature since it does not require the Legislature to enact the diesel tax; it only enables the elected board of county commissioners to do so.

Senate Bill 48 (1st Reprint) does not allow an increased tax on dyed diesel fuel for agriculture and mining. It requires rural counties which have more than 10 million gallons of diesel sold to comply with IFTA and contribute up to 10 percent of the proceeds of the tax to NDOT for highway truck parking. It is believed this would set a national precedent for local governments to assist in funding truck parking on highways, which is a federal and state issue.

Senate Bill 48 (1st Reprint) will also address taxpayer inequities in road funding for rural roads. Currently, diesel vehicles do not pay for the repair and maintenance of any local roads in the rural counties. Only gas vehicles pay for the repair and maintenance of local roads through various gas taxes equaling 15.3 cents of gas taxes. This creates a taxpayer inequity whereas owners of gas vehicles pay for local roads, but owners of diesel vehicles do not. Senate Bill 48 (1st Reprint) corrects this taxpayer inequity.

Decades ago the Nevada Legislature enacted legislation to allow the board of county commissioners to enact a 5-cent gas tax as a local option. However, a corresponding 5-cent diesel tax was never allowed to be enacted. Senate Bill 48 (1st Reprint) corrects this taxpayer inequity.

Senate Bill 48 (1st Reprint) requires the proceeds of the 5-cent diesel tax be distributed among the cities and counties according to the current Regional Transportation Commission (RTC) distribution, which has been in effect for decades. As a member of the Committee on Local Government Finance for 20 years, we have had many local governments, cities, and counties complain about different tax distributions, such as the CTX [consolidated tax distribution] and others. In that time period, I have never heard any jurisdiction complain about the RTC distribution between cities and counties. That is one of the things that attracted me to this type of distribution because it is tried and true and it is an existing tax distribution mechanism.

As an example, in Lyon County it is projected they would get approximately \$2,337,364 in tax proceeds. Lyon County would receive \$1,343,985, the City of Fernley would receive \$909,235, and Yerington would receive \$84,145 ([Exhibit F](#)). It is a large amount of money, but it is not going to solve all of our road problems—but it does take a step forward. We would appreciate your support of S.B. 48 (R1). I do believe it is good tax policy since it addresses taxpayer inequities in rural Nevada. It also enables a rural board of county commissioners to enact the tax with a two-thirds majority or through a vote of the people. The bottom line is, this is a local issue. It is about local taxes and local services. I believe the best way to handle these types of situations is to let the local governments closest to the people make those decisions ([Exhibit F](#)).

**Alexis Motarex, Government Affairs Manager, Nevada Chapter, The Associated General Contractors of America, Inc.:**

The Associated General Contractors has long been a proponent of adequately and fairly funding road maintenance and construction at the state and local levels to meet the needs of Nevadans. Over the years, though, as vehicle miles traveled and fuel efficiency have both continued to increase, our ability to keep pace with the infrastructure needs of our state has fallen woefully short. We are here in support of S.B. 48 (R1) as a means for our smaller counties to address their growing shortfall. Although relying on an antiquated method to fund road construction is not a long-term solution, we believe this is a reasonable short-term Band-Aid for the time being.

**Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:**

We are here to support of S.B. 48 (R1). I want to repeat what Mr. Enos and Ms. Walker stated—we believe this is a fair and equitable tax.

**Nick Vander Poel, representing City of Fernley:**

We are here today in support of S.B. 48 (R1), and while we have the opportunity, we want to indulge the Committee on the City of Fernley and our interesting journey. But we want to reiterate that we are here as a good partner with Lyon County on this piece of legislation.

In 2018 the City of Fernley had an advisory question on the ballot as it related to approaching the Legislature with similar language—5 cents on diesel—but within the city, since 95 percent of the diesel pumped in Lyon County is in Fernley at the four major truck stops. That measure failed by 23 votes, and being involved in that campaign, I will admit it did not fail because the voters rejected the diesel tax. The voters were simply confused because they heard of competing measures and were afraid of double taxation.

The residents in Fernley recognize the need for revenue to repair the roads. The City of Fernley has been told time and time again that we need to help ourselves for our own financial situation due to the consolidated tax distribution (CTX), which this body will likely never touch. We did, however, help ourselves. In 2017 we approached the Legislature for access to a marijuana establishment license, and credit to then-Senator Tick Segerblom for helping us along the way and getting language inserted in Senate Bill 487 of the 79th Session. The city lifted its moratorium and adopted ordinances. A license was issued in early January 2018, and that dispensary opened on January 16, 2019.

We have two issues we believe should be stated to this Committee. In 2018 the City of Fernley, which has a population just under 20,000, received a check from the Department of Taxation for around \$25,000 as part of the marijuana revenue distribution from the state. But in this year's report, Fernley is missing from the allocation. There are counties on this list that do not even have a dispensary and are getting allocated \$88,000. So by doing nothing, there are those who are being rewarded. The City of Fernley stepped up, but we continue to get stiffed by the State of Nevada, which brings me to the final point, back to CTX.

In fiscal year 2017-2018, Lyon County received \$15.6 million in CTX. The City of Yerington, population 3,100, received \$453,000 in CTX, whereas the City of Fernley, whose population is almost 20,000, received \$164,000. Late last month, the City of Fernley received its first quarterly check from the Silver State Relief Fernley marijuana dispensary. That quarterly check from the 3 percent excise fee was \$34,000. That was for only two months. Simple math says the city could earn almost \$200,000 from our one dispensary this year. So the City of Fernley, which is one of the fastest-growing cities outside of . . .

**Chair Neal:**

This testimony is completely off topic. You are touching in areas that are not related to this bill. We are not talking about dispensaries. We are not talking about CTX. Because I respect you and it seemed you had to get some things off your chest, I allowed it. I need you to give your final comments related to S.B. 48 (R1), but do not continue to talk about anything else.

**Nick Vander Poel:**

That being said, Madam Chair, the City of Fernley thanks you for your time to indulge the Committee and is here in support of S.B. 48 (R1).

**Molly Ellery, representing Nevada Bighorns Unlimited:**

Without taking too much of your time, we just want to share our support for S.B. 48 (R1) and thank those for bringing it forward.

**Daniel Pierrott, representing Nevada Builders Alliance:**

We are in strong support of S.B. 48 (R1). The Nevada Builders Alliance represents more than 800 members and is the largest construction and trade association in the state. We are beyond grateful of how our state has been able to grow; however, we also recognize the issues being an indirect consequence of this. One such example is the strain on infrastructure our state has seen in recent years. We support S.B. 48 (R1) as it will allow our rural members to address their current infrastructure needs. We urge you to support this bill.

**Jon S. Erb, Transportation Engineering Manager, Douglas County Public Works:**

I am here to represent Douglas County in support of S.B. 48 (R1). We currently have our gas tax completely maxed out. It brings in a revenue of around \$2 million, but it is not nearly enough. There is a cost to everyone related to roads being in poor condition, whether it be a possible decrease in safety of your travels, your struts, tires, or shocks. I just wanted to point that out—there is a cost to unmaintained roads. This would help us address that issue with the extra funds and revenue.

**Chair Neal:**

We will take testimony from Elko now and then come back to Carson City for those in support of the bill.

**Robert K. Stokes, County Manager, Elko County:**

Elko County supports the passage of S.B. 48 (R1). As the fourth-largest county by area in the continental United States, we have ample opportunities and ample challenges to deal with transportation needs in our county. We believe if this authority is presented to the county, it will give us future options to help deal with those challenges. Whether that be enabling legislation that allows a two-thirds vote of the board of county commissioners or as a ballot question, Elko County follows a very deliberate, public process in order to allow for our citizens to have input into that process. Two years ago we passed a 0.25-cent infrastructure sales tax for roads and emergency services. It took us eight months of many hearings and public meetings with the county commission before that was approved by the board of county commissioners. We support this legislation, and I want to thank you for allowing me to provide this testimony through video.

**Robert L. Crowell, Mayor, Carson City:**

Our board has unanimously voted to support S.B. 48 (R1). This bill, if enacted, would allow either the board or the vote of the people to increase the diesel tax in our community by 5 cents. We sell about 7.8 million gallons, which is under the 10 million gallons you have

been talking about for truck stops. That tax would yield about \$400,000 annually to Carson City. Our annual budget for roads is approximately \$4 million with an estimated funding need of \$15 million. This increase would represent a 10 percent increase in our funding for roads, which would represent a critical addition to our budgets. We ask for your support and endorsement of S.B. 48 (R1).

**Pete Olsen, Commissioner, District 2, Churchill County:**

I have been a commissioner for Churchill County for eight years. I am here in support of S.B. 48 (R1). Our community has five million acres in our county, 446 miles of roads—both paved and dirt that we need to maintain. Over the last ten years, our revenues from the gasoline tax have been flat, right about \$2 million per year. The needs have continued to grow and what we do currently with our road department is triage. We look around the community, and the worst roads get the attention. There are a lot of roads that need attention that are not getting it, and we are falling behind. If this 5 cents were enacted, it would generate about \$300,000 for us, and we would have to share that with the City of Fallon through our RTC distribution. We are definitely in need of these funds and would support this measure ([Exhibit G](#)).

**Marshall McBride, Chairman, Board of Commissioners, Storey County:**

Joining me today is Austin Osborne, my Director of Human Resources and Planning, who on July 1, 2019, will be the new Storey County Manager. I will not dwell too much on statistics; I know they can become boring. Storey County is the smallest county in the state next to Carson City. We have about 100 lane miles in Storey County. Our needs are currently at about \$6 million to bring us up to where we should be. We can only budget about \$600,000 per year, so we are falling behind like all the other rural counties.

We sell about 500,000 gallons of diesel per year, so we have not met the threshold of 10 million gallons, but we plan on getting to that. Everyone is familiar with the Tahoe-Reno Industrial Center. We have one large truck stop out there with another one in the plans, so in time we will meet that threshold and be able to contribute to this fund as everyone else does. We wholeheartedly support S.B. 48 (R1). We need to move forward on this. It is something we desperately need. The industrial park is large. Most of our road miles are out there, and it is almost all truck traffic—trucks in and out every couple of seconds.

I will finish on a little bit of fairness. I drive a gasoline-powered pickup truck in Virginia City, so I pay a motor fuel tax at the local service station. My brother lives here in Carson City. He drives a big diesel pickup truck, and he gets away scot-free. So in an issue of fairness, I think my brother needs to start paying up.

**Austin Osborne, Planning Director, Storey County:**

I am the incoming manager for Storey County. Chairman McBride said it great—the impacts in Storey County. What we really support in this bill is it shifts the burden in our county from a resident taxpayer to interstate trucking. In our county, the majority of our roads are at the Tahoe-Reno Industrial Center. A majority of the traffic is, as Mr. McBride stated, interstate trucking—going in and out of that industrial center. The majority of the impact is

coming from that industrial center, but the majority of the funding to help pay for improving and maintaining those roads is coming from resident taxpayers. This bill is excellent because it does just as described. The best thing also is it is enabling legislation. If our board of county commissioners decides to make a decision in Storey County that is right for us, it still allows other counties in the state, those boards, to make decisions they feel are right for them under their circumstances.

**Tim Dahl, Director, Nye County Public Works:**

I have a few things to add to your thought process as you continue to hopefully deliberate supporting this bill. This has a direct effect on me. I am the guy who is responsible to try to maintain over 2,800 miles of roads in our 18,000-square-mile county. It is a challenge for me to direct the funds we have available to the areas that need it most because, quite honestly, there are many areas that need it in all of our different communities within Nye County.

It is one thing to say that the majority of the people live in Pahrump or the majority of the population is in Pahrump, but it is those outlying communities that have fueling stations that need that attention too. This would definitely help us accommodate some of those projects in those outlying areas.

In the 5 cents this would give us for diesel tax, it would give me about 3 miles of overlay of an inch and a half of pavement. That is what it would allow me to do. It would allow me to do up to one-half mile of remove and replace. It would allow me to do up to about 6 miles of chip-seal roads. It will have a significant amount of impact on our rural communities. It would be fantastic to try to get ahead or catch up.

One thing I would like you to take into consideration is most of the damage to our roads is not done by the smaller cars. It is done by the larger equipment, the large vehicles on our roads—the ones that have the biggest impact and the biggest effect on deteriorating our roads. All those pickup trucks, delivery trucks, and semi-trucks traveling across the country are impacting our roads the most. I would ask for your support of this bill.

**Jim French, Chairman, Board of Commissioners, Humboldt County:**

I am not going to reiterate what my colleagues before me have eloquently shared with you. I would like to share a few other things that you may not have thought about. With regard to those counties running on a pretty thin margin, their road taxes they are dealing with, the increase in fuel efficiency in automobiles, and the advancement of a lot of the electric vehicles on the road right now have contributed to a reduction in fuel consumption. That was the obvious intent, but I think the unintended consequence of that is they request some of the services on those roads but are not paying any of the taxes. Another thing I wanted to point out is in Humboldt County, over 40 percent of the roads that we are required to maintain, for delivery and over-the-road trucks, are not on the interstate. Those are county roads as well as state routes.



The shortfall in Humboldt County right now is about \$1 million per year for our road fund. That is providing us the ability to triage roads, as was pointed out by Commissioner Olsen from Churchill County. We try to repair those roads that need the work the most. It puts us in an unenviable position of having to prioritize damaged roads, and in many cases those roads are not touched for several years following the damage.

We all remember the big weather events we had two years ago. In Humboldt County we had 36 system roads under water at the same time and we had three bridges. When those types of incidents occur, especially in rural counties where you are running on a pretty thin margin in terms of what you have available for road maintenance and repair, it put us in a real tough spot—trying to provide and select those roads we are going to repair and reopen. It required us to pull from other accounts in the county to try to make ends meet.

In looking at the NDOT numbers, Humboldt County is currently selling approximately 20 million gallons of fuel per year, which would produce enough revenue to fill about half the required shortfall annually we are seeing right now. It is essential and crucial that we get out ahead of this problem at this stage, so down the road we are not repairing roads with revenues that might support the county library. We would appreciate your support on S.B. 48 (R1) and thank you for your time.

**Chair Neal:**

We will now move to those in opposition to S.B. 48 (R1).

**Marcos Lopez, Field Director, Americans for Prosperity Nevada:**

We stand in opposition to S.B. 48 (R1), which will allow counties under 100,000 population to raise diesel fuel taxes. Taxes on fuel—gas or diesel—are regressive in nature. They harm low-income families and individuals the most. It is these individuals and families who spend a higher percentage of their income on food and gas.

The reason I bring up food is that in a report by the University of Nevada, Reno's College of Agriculture, Biotechnology and Natural Resources, it was cited that the majority of the food consumed in Nevada is imported from distances greater than 500 miles. All of this, in terms of higher transportation costs, will be transferred on to the consumer.

Maintaining infrastructure is an activity that government has long engaged in, but when we do this, we should do it in the most efficient and effective way possible. A lot of these counties are talking about how they do not have enough money to fix the roads. One of the things we could do to make that money go further is to eliminate welfare for unions like prevailing wage laws and project labor agreements. These state prevailing wage laws require any construction contract receiving government funds to pay wage rates predetermined by the government—typically about 20 percent above market rates—which predominantly benefits unions while fleecing taxpayers. On behalf of our over 50,000 activists, we urge you to reject S.B. 48 (R1).

**Eddie Diaz, Community Engagement Director, the LIBRE Initiative:**

I am the community engagement director for the LIBRE Initiative here in the state of Nevada. We oppose S.B. 48 (R1) for the reasons stated by my Americans for Prosperity Nevada colleague sitting right next to me.

**Luis Vega, Field Director II Nevada, Concerned Veterans for America:**

We would also like to express that we oppose S.B. 48 (R1) for the reasons stated by my colleague with Americans for Prosperity Nevada and the LIBRE Initiative.

**Janine Hansen, State President, Nevada Families for Freedom:**

Whenever we have a bill to increase taxes presented, there are always seemingly a lot of good reasons. I would like to share with you some of my concerns. One of my main concerns about this bill is that the purpose essentially is to circumvent the will of the people. The reason they have two-thirds vote, or a vote of the people, is because almost every county will be planning to have the county commissioners vote on it, not the people.

When they voted on increasing the diesel fuel taxes in 2016, all the rural counties overwhelmingly voted no. In fact, the lowest county—Storey County—voted 59 percent against it, and the others were 60 percent to 70 percent against raising those taxes. Those were the votes by the people.

If this was truly to gather the input from the people, I think it would require not only a two-thirds vote of the county commissioners, but a vote of the people, and if that happened, I would not oppose the bill.

I live on a dirt road in Elko. I do not have a diesel, but most of my friends have some kind of a diesel truck to get around. They have to, otherwise they cannot drive. If it rains we have a mud hole. If it snows and it melts, we have a mud hole or we have ice. If you do not have a four-wheel-drive diesel or gasoline truck, then it is very difficult. Because we have chosen to live there, we have different kinds of requirements for vehicles.

Another problem living in the rural counties is that we have to travel a lot farther just to go to the doctor. I come to Reno to see my doctor. Many of my friends go to Twin Falls, Idaho, or Salt Lake City because there is not adequate health care in our communities. The Greyhound bus does not stop in Elko anymore. There are not many options for people with regard to that. Even if you want to go to Costco, you have to go to Twin Falls, Reno, or Salt Lake City. Almost anything you want to do, you have to be able to travel, and those are long miles, so you are paying the diesel tax when you do that, and you will be the one who will be doing it.

Why does that matter? Because, of course, when the cost of diesel goes up, everything else goes up too—because everything is trucked in. So food goes up, clothing goes up, and parts for vehicles go up. Whatever you have, the cost of it goes up when diesel fuel goes up and

taxes go up. There is no way around it because they have to recoup that cost. The little person who is trying to survive in the rural counties on a minimal income will be the most severely impacted by this. I think that is important to realize.

Once a year the Federal Reserve publishes the results of something called SHED [Survey of Household Economics and Decisionmaking]. They did a survey and found that 40 percent of American adults did not have enough in their savings to be able to pay for a \$400 emergency expense. When you have to fix your car, it is usually between \$500 and \$600. If you have a medical emergency, it could be over \$1,200. It is not like \$400 is a particularly large amount, but it indicates that 40 percent, roughly four out of ten Americans, could not have paid a \$400 expense. Now they could have possibly borrowed it from family or put it on the credit card, but some 11 percent were not even able to do that. They had no resource to be able to pay that \$400, and that is a lot of Americans. That is 27 million adults who could not even meet that.

I do not know if you watch the economy like I do, but if you are watching, you will notice that car sales are way down, home sales are way down, and that was the indicator before 2008 of a recession. We need to be careful about continuing to think that there is no end to the amount of taxes that can be charged until people begin to fail to be able to take care of their own families. We urge you to vote no.

**Marvin Weissberger, Private Citizen, Genoa, Nevada:**

I oppose this bill because it entered in the last legislative session [Senate Bill 439 of the 79th Session] and the outcome of that was an amendment stating that to vote this in would require two-thirds majority of the county commissioners and a majority of the voters in the county. That is where I stand on this. I think you are coming in through the back door on this and stating that it is just up to the county commissioners to do it. If the roads are in such dire condition, the citizens will vote on it as well. I do not think it should be an "or" conjunction there.

**Wiselet Rouzard, Community Engagement, Americans for Prosperity Nevada:**

My colleagues mentioned several things earlier, so I am going to redirect this to what the gentleman and Ms. Hansen had stated: This is not about the outcome of what the tax would do; it is about the process in which a tax is levied upon the people. Each and every one of you here swore an oath to uphold and defend the *Nevada Constitution*, and the *Nevada Constitution* is there to protect a process, a process that protects the will of the people. As Ms. Hansen said, if the will of the people is to have this diesel tax of 5 cents, so be it, but when you change the word from "and" to "or," you undermine the ability of the people to speak. It undermines the entire fabric of our *Nevada Constitution*. I urge you to redirect this. When you make a decision, ask yourself if you really want to protect the process of the will of the people, and if so, I ask you to oppose S.B. 48 (R1) simply because the process to protect the will of the people is being undermined.

**Assemblywoman Swank:**

I am a little confused. Is it not correct that county commissioners are elected?

**Wiselet Rouzard:**

They are elected.

**Assemblywoman Swank:**

Thank you.

**Wiselet Rouzard:**

You are correct. They are elected, but in regard to the taxes, the *Nevada Constitution*, that is still a bureaucratic process. When you are talking about the will of the people, it is directly the voice of the people, not those who represent a sub-faction of the people. So, if you have a group that is for a particular party, yet the people are advocating something different, I think the will of the people overpowers the bureaucratic process. This just reassures that it is upholding the *Nevada Constitution*, which is principal, and the process is there for a reason—to protect the will of the people. This is not about the outcome; this is about the process. If the people choose it, then so be it.

**Chair Neal:**

Is there anyone who would like to testify as neutral on S.B. 48 (R1)?

**Karen Stoll, Tax Program Supervisor II, Motor Carrier Division, Department of Motor Vehicles:**

We are the division that administers the fuel tax programs. The DMV is neutral on S.B. 48 (R1). We appreciated the opportunity to work with the bill sponsors.

**Chair Neal:**

Is there anyone else who would like to testify as neutral on S.B. 48 (R1)? [There was no one.] Ms. Stapleton, do you have any closing remarks?

**Dagny Stapleton:**

I just have one thing. I wanted to answer the question that came from you regarding the change in the name of the local fuel tax fund to strike the word "indexing." On page 6, line 39, as well as the top of page 8, this change appears throughout the bill. Just to clarify, this is the state fund that these fuel tax dollars would be encumbered into. I believe this was a change LCB [Legislative Counsel Bureau] made because this fund encumbers fuel tax dollars that are indexed, but it would also be used, if enacted for this bill, for dollars that are not indexed. The dollars from this fund are then transferred to the regional street and highway fund on the county level. To clarify, the state fund cannot be swept. Those dollars have to stay in there along with the county funds. Those dollars can only be used for the projects that are outlined already in NRS.

[([Exhibit H](#)) was submitted but not discussed and is included as an exhibit for the hearing.]

**Chair Neal:**

I will close the hearing on S.B. 48 (R1) and open the hearing on Senate Bill 81 (1st Reprint).

**Senate Bill 81 (1st Reprint): Revises various provisions relating to tobacco products.  
(BDR 32-190)**

**Melanie Young, Executive Director, Department of Taxation:**

With me today is Shellie Hughes, my Chief Deputy Executive Director. Before you today is Senate Bill 81 (1st Reprint), which revises the provisions relating to tobacco products. The bill establishes uniform provisions for the licensing of persons engaged in the manufacture, distribution, and sale of cigarettes and other tobacco products (OTP) to create a consistency in the statutes of OTP.

The amended bill before you today is the result of numerous meetings, conversations, and communications with the Office of the Governor, Office of the Attorney General (AG), and industry partners. At this time I will turn it over to Ms. Hughes. She will walk you through the provisions of the bill.

**Shellie Hughes, Chief Deputy Executive Director, Department of Taxation:**

I am before you today to discuss S.B. 81 (R1). Before I go into the details of the bill, I would first like to explain the current issues we are trying to resolve with this bill. Existing law under *Nevada Revised Statutes* (NRS) Chapter 370 provides certain licensing procedures, requirements, and penalties for cigarettes and OTP. *Nevada Revised Statutes* Chapter 370 has a section that contains provisions that relate solely to cigarettes and has another section that contains provisions that relate solely to OTP.

We found that clarity and detail are needed with many of the provisions that relate to OTP to bring those provisions in alignment with the cigarette provisions, so we have uniform provisions for both cigarettes and OTP in the areas that are similar between the two. This will make the law clear and enforceable. Additionally, there were some procedures that were absent in both the cigarettes and OTP sections of NRS Chapter 370, such as procedures to claim a refund and issuing a license for a logistics company, warehouse, or distribution center. Essentially, we see this bill as a cleanup bill.

The provisions under OTP in NRS Chapter 370 are similar to provisions under cigarettes for licensing and applications, payment of taxes, refunds and credits, reporting, suspension and revocation, penalties, and what is considered contraband and seizures. However, many of those provisions under the OTP section that starts at NRS 370.440 and ends at 370.503 are not as detailed as the similar provisions under the cigarette section. For example, the OTP provisions explain who needs to apply for a license, but those provisions do not go into detail about the contents of the license, posting and transfer requirements, the scope of the license, and the period of validity and renewal procedures as described in the cigarette provisions. All these provisions are important for enforcement purposes and to keep the OTP provisions in uniformity with the cigarette provisions. This is not an expansion of licensing requirements, rather just a clarification of existing provisions.

If you look at the current 99 provisions under the cigarette section compared to the 11 provisions under the OTP section, you understand that the OTP provisions are lacking the detail and clarity the cigarette provisions have. The only real difference between the two types of products is that cigarettes fall under the MSA [Tobacco Master Settlement Agreement] and are required to be stamped.

Since this bill is quite lengthy, I will try to summarize each section quickly. Sections 2 through 18 are definitions, and I want to point out that sections 9 and 16 are new definitions which define a logistics company and warehouse or distribution center.

Section 19 of S.B. 81 (R1) adds that a person shall not engage as a wholesale dealer of cigarettes or OTP; a tobacco retailer; cigarette vending machine operator; logistics company; or warehouse or distribution center without a license. It adds that a manufacturer shall not sell any cigarettes to a wholesale dealer of cigarettes in this state or operate or permit any person other than a manufacturer to operate a cigarette rolling machine unless that person secures a license. It adds that a separate license is needed for each activity and that a person may be licensed in all categories. Currently, most of this language exists under separate sections in NRS Chapter 370. The new language relates to requiring logistics companies and warehouse or distribution centers to obtain a license prior to operating. Out-of-state wholesalers may store tobacco at licensed warehouses.

Sections 20 through 34 establish uniform provisions for licensing of persons engaged in the manufacture, distribution, and sale of cigarettes and OTP. Section 20 adds that the Department of Taxation will create and maintain on its Internet website, and make available to the public, a list of all currently valid licenses and the identity of those holding those licenses, and Indian tribes on whose reservations or colonies cigarettes or other tobacco products are sold from which the Department of Taxation does not collect the tax. The Department of Taxation will update the list at least once a month.

Section 21 adds that no license will be issued, maintained, or renewed if:

- The applicant with more than 10 percent of the ownership is delinquent in payment of any tax, penalty, or fee, or in any return; has had a license revoked or an equivalent license in another jurisdiction revoked within the past two years; or has been convicted of a crime relating to the manufacture, distribution, or sale of cigarettes or OTP, or a crime relating to the avoidance of taxes; is a manufacturer who has imported any cigarettes into the U.S. in violation of federal law or imported or manufactured any cigarettes that do not comply with federal labeling and packaging laws; or is a nonparticipating manufacturer who is not in full compliance with the NRS relating to escrow deposits.
- The issuance of the license would result in the applicant conducting operations in the same physical location of another licensee.

- The issuance would result in the applicant conducting operations from a residential address, storage facility, mailbox, or post office box.

This section does not prevent a licensed out-of-state wholesale dealer's representative who is located in Nevada from transporting OTP in their personal vehicle for purposes of delivery to an in-state licensed wholesale dealer or licensed retailer.

Section 22 adds requirements for an application for a license. Section 23 adds that a licensee shall not operate from any location other than that listed on the license. It also adds that the Department of Taxation may issue a temporary license for a convention or trade show with specific dates of operation.

Section 24 adds that the Department of Taxation may issue a license without a fee to anyone authorized to do business on an Indian reservation or upon a military or other federal reservation. Section 25 adds what will be included on the license. Section 26 adds the requirements for each license holder regarding signing and posting. It also adds that this license is nontransferable unless written notice is provided with change of location.

Section 27 adds what each license authorizes the holder to do. Section 28 adds that each license is valid for one calendar year and must be renewed annually. It discusses the fee and due date for a license and the late payment of fees. Section 29 adds requirements for a bond and the amount of the bond for each licensed wholesale dealer and for deferral of payment on purchase of revenue stamps.

Section 30 adds record-keeping requirements and production of records. Section 31 adds that this chapter does not prohibit any county, city, or town in Nevada from requiring licenses to operate. Section 32 adds provisions that indicate after notice and hearing that the Department of Taxation may impose a suspension or revocation of a license in certain circumstances. This section adds six factors that the Department of Taxation must consider when determining the penalty that would be imposed on a licensee for failing to file a report or certification required by this chapter, or files an incomplete or inaccurate report or certification. This section does not affect the appeal rights afforded to a taxpayer in NRS 360.245.

Section 33 adds that the Department of Taxation will adopt regulations establishing procedures for the suspension and revocation of licenses. Section 34 adds that sections 2 through 34 do not apply to common carriers; persons with quantities for household or personal use which are exempt from federal import duty; and a duty-free sales enterprise. Section 35 adds how much inventory a wholesale dealer of OTP must have on hand. This is a \$5,000 inventory requirement and it does not apply to representatives of out-of-state wholesale dealers.

Sections 36 through 45 relate to overpayments, credits, and refunds. Section 46 amends NRS 370.0305 to include wholesale dealer of cigarettes and OTP and tobacco retail dealers. Section 47 amends NRS 370.035 to provide an exemption for licensed logistics companies or

operators of a licensed warehouse or distribution center from the definition of sale. Section 48 amends NRS 370.055 to revise the activities that cause a person to be considered a wholesale dealer of cigarettes and provides these activities do not include the purchase of unstamped cigarettes from anyone other than a manufacturer.

Section 49 amends NRS 370.073 to include manufacturers and retail dealers to maintain current mailing and electronic addresses. Section 50 amends NRS 370.090 to require a licensee, and not an applicant for a license, to keep \$10,000 worth of cigarettes on hand. Section 51 amends NRS 370.175 to include that the provisions do not apply to a person engaged in manufacturing, testing, investigation, or research of cigarettes or OTP if the person is operating legally and has all licenses required by federal and state law. Sections 52 through 54, 56, 61, 66, and 70 remove the phrase "or metered machine impressions." Section 55 removes the phrase "received at those stamping facilities."

Section 57 amends NRS 370.240 to include what should be included in the report to the Department of Taxation regarding stamped and unstamped cigarettes, and the date it will be provided. Section 58 amends NRS 370.260 to include that all taxes and fees imposed by sections 2 through 34 of this bill be remitted to the Department of Taxation. Section 59 amends NRS 370.270 to indicate when a cigarette stamp should be affixed, which is no later than five calendar days after the retail dealer takes possession of a package of cigarettes.

Section 60 amends NRS 370.280 to indicate how much refund for cigarette stamp tax paid shall be allowed to wholesale dealers and what is required to claim the refund. Sections 61 through 65 make conforming revisions. Sections 66, 67, and 69 include violations of cigarette and OTP provisions that are included in sections 2 through 34 of this bill. A person in violation of any of these provisions is guilty of a category C felony or guilty of a gross misdemeanor.

Section 68 amends NRS 370.385 to indicate that a wholesale dealer shall not affix a Nevada cigarette revenue stamp and indicates what types of packages, cartons, packets, or other containers that a wholesale dealer or a retail dealer shall not accept or possess. Section 71 extends the forfeiture provisions found in existing cigarette provisions to OTP. Section 72 amends NRS 370.425 to indicate when a civil penalty will be imposed. It also removes the 500 percent penalty and establishes progressive penalties.

Section 73 extends the definitions found in NRS 370.440 to section 35 of this bill. Section 73.3 revises when the wholesale tax is imposed on OTP. Section 73.7 revises reporting provisions for OTP. Section 74 amends NRS 370.470 to indicate when a wholesale dealer of OTP is required to obtain an itemized invoice from a wholesale dealer when purchasing OTP. Section 74.3 and 74.7 add clarifying language to existing statutes. Section 75 extends the provisions of NRS 370.525 regarding a person instituting a civil action for injunctive relief if the person sustains direct economic or commercial injury as a result of sections 2 through 34 of this bill.



Section 76 amends NRS 370.677 to require the Department of Taxation to notify wholesale dealers and retail dealers of cigarettes of any changes to the directory, and revises notification requirements of the Department of Taxation from sending to a physical address to requiring notification to an email address. It requires a wholesale dealer of cigarettes to identify and set aside for sale outside of this state any products from a manufacturer, style, or brand family that has been removed from the directory within 20 days after receiving the notice of the removal. Section 77 amends NRS 370.684 to remove from the requirement that an importer is jointly and severally liable for the escrow deposit for cigarettes sent to a person who holds a license as a retail dealer.

Section 78 amends NRS 370.685 to require each distributor of cigarettes to submit certain information to the Department of Taxation on or before the 25th day of each calendar month instead of 20 days after each calendar quarter. Section 79 makes conforming changes to the grounds for the suspension or revocation of a license of a wholesale dealer. Section 80 amends NRS 100.065 to indicate that the Department of Taxation will not accept bonds, savings certificates, certificates of deposit, or investment certificates in lieu of the surety bond. Section 81 makes conforming changes to include sections 2 through 34 of this bill.

Section 82 adds requirements for a person operating as a logistics company or a warehouse or distribution center. Section 82.5 adds provisions that require the payment of tax on OTP in the possession of a wholesale dealer that was purchased and received prior to January 1, 2020. Section 83 repeals certain sections of NRS Chapter 370 that were only under the title "Cigarettes" or only under the title "Other Tobacco Products," and have now been added to a uniform section that applies to both "Cigarettes and Other Tobacco Products," which was previously discussed in sections 2 through 34.

Lastly, section 84 adds sections 1 through 28, 30 through 73, and 74 through 82, and subsection 1 of section 83 become effective upon passage. Section 29 and subsection 2 of section 83 become effective 180 days after passage. Sections 73.3, 73.7, and 82.5 of this act become effective upon passage and approval for the purposes of adopting regulations and performing other preparatory administrative tasks necessary to carry out the provisions, and on January 1, 2020, for all other purposes. With that, I will turn it back over to Director Young.

**Melanie Young:**

I would like to dive into section 32 a little further to add some clarifying information on this section. Nevada receives approximately \$40 million per year from the Master Settlement Agreement (MSA); however, this money is contingent on the state's diligent enforcement of that agreement. Fundamental to the enforcement of the MSA is complete and accurate tracking of the flow of cigarettes within the state of Nevada. One manner used to track cigarettes within the state is the completion of monthly distributor reports by cigarette wholesale dealers. This report tracks the quantity of cigarettes entering or being sold within

the state down to the stick. The Department of Taxation already has the authority under NRS 370.250 to suspend or revoke a cigarette wholesale dealer's license if the licensee fails to file, or files an incomplete or inaccurate report. Section 32, subsection 1 of S.B. 81 (R1) simply retains the Department of Taxation's authority to do so.

In negotiations with industry over what has now been several months, the Department of Taxation has repeatedly heard concerns that a minor variance contained within a monthly report, specifically a small number of cigarettes that are unaccounted for, could result in the suspension of a wholesale dealer's license. Recognizing that even the best tracking system may not be perfect, and acknowledging that when millions of cigarettes are being transacted, it is reasonable that there may be a small loss. The Department of Taxation proposed what is now in section 32, subsection 6, which mandates that the Department of Taxation consider six additional factors before suspending a wholesale dealer's license for filing an inaccurate or incomplete report.

Specifically addressing industry concerns that a license could be suspended or revoked for an identified variance, the Department of Taxation added section 32, subsection 6, paragraph (d), which explicitly requires the Department of Taxation to consider, before suspending or revoking a license, "the quantity of the variance, the materiality of the variance and the extent to which the licensee accounts for the variance by brand or by whether tax has been paid on the cigarettes."

Because this is a mandatory consideration, it ensures that a small variance that is the result of normal business operations does not result in a disproportionate penalty. It requires the Department of Taxation to look at inventory losses in a proper perspective by considering the loss in proportion to the quantity of overall cigarettes being sold. And it incentivizes the wholesale dealer to exercise diligence in tracking their losses, specifically to the brand and tax paid status. A variance traceable to a specific brand allows the Department of Taxation to identify the impact the loss may have on diligent enforcement of the MSA and to look for trends potentially warranting further investigation.

Industry has expressed agreement with the mandatory factors put in place in section 32, subsection 6, paragraphs (a) through (f). However, through last week, industry has been adamant that a fixed safe harbor should be written into section 32. Per their proposed amendments [page 4, ([Exhibit I](#)) and page 9, ([Exhibit J](#))], the Department of Taxation would lack the authority to suspend a license if a variance does not exceed a given threshold. While the Department of Taxation acknowledges industry's desire for an assurance that their license will not be suspended for small variances, the Department of Taxation has already gone as far as it is able through the inclusion of the factors in section 32, subsection 6, paragraphs (a) through (f). These factors make clear that the Department of Taxation is not intent on suspending the license of a "good player" who in the ordinary course of business sustains a small loss.

The Department of Taxation is not willing to disarm itself of the right to suspend the license of a "bad player" just so that others feel assured their license will not be suspended. The Department of Taxation must have the tools to take action anytime fraud, deceit, or tax evasion is discovered no matter how trivial the quantity. The Department of Taxation cannot support the inclusion of a safe harbor, which would prohibit the Department of Taxation from suspending the license if it discovered product was being siphoned to an unlicensed black market seller, so long as that quantity being mishandled fell within the safe harbor. The Department of Taxation cannot be forced to disregard tax evasion, so long as the quantity of cigarettes on which tax was evaded falls within the safe harbor provision. Including in statute a threshold invites misconduct, provided it is within that clearly advertised threshold. Industry has proposed addressing violations of less than the safe harbor through the imposition of a civil penalty; however, circumstances could present where that is not a sufficiently harsh penalty. The Department of Taxation must maintain the authority to suspend licenses when appropriate, even if the quantity of cigarettes at issue may be deemed trivial if lost in good faith.

Further, the inclusion of a safe harbor would be a disincentive towards wholesale dealers improving their record-keeping and it would be a bold acknowledgement that Nevada has no intention of precisely tracking product. This jeopardizes the state's diligent enforcement of the MSA. The Department of Taxation's records reflect that in 2018 there were approximately 3.22 billion cigarettes sold in Nevada. Even a 1 percent safe harbor permits the loss, without any explanation required, of over 32 million sticks of cigarettes. The state is required under the MSA to collect escrow for every cigarette sold in the state of Nevada if it was manufactured by a company that is not a signatory to the MSA. This escrow is assessed based on the quantity reported by the wholesale dealer, which is then shared with the Attorney General's Office to pursue and collect escrow. If the wholesale dealer reports are knowingly inaccurate in that they may under-account for cigarettes up to the amount of the safe harbor month after month, the state cannot collect the proper amount of escrow due.

Section 32, subsection 6 factors incentivize wholesalers to minimize their losses, explain their losses, and take action to decrease their losses. It also protects cigarette wholesale dealers from losing their license for good-faith variances on their monthly reports, which enables the Department of Taxation to take appropriately harsh enforcement action when the situation necessitates. This concludes the Department of Taxation's presentation. We would like to turn it over to the Attorney General's Office and Attorney General Ford.

**Aaron Ford, Attorney General:**

It is an atypical occurrence when my office sits at the table at the same time as an agency, advocating for the passions of their bill. Unfortunately, my presence and the presence of my Deputy Attorney General, Hillary Bunker, is prompted by a letter dated May 6, 2019 ([Exhibit I](#)), written by lawyers for McLane Company, sent to Senator Marilyn Dondero Loop and Assemblywoman Dina Neal. The content of this letter is inaccurate, misleading, and, frankly the tenor of which is a bit offensive. I wanted to come in personally and offer some comments and retorts to some of the comments made in this letter, and allow Ms. Bunker to offer additional comments.

I will begin with the first paragraph [page 1, ([Exhibit I](#))], where the attorney states, "The Company's opposition is based on the refusal of the Department, after weeks of negotiation, to include in section 32 a modest change that will protect wholesale dealers from the draconian and punitive statutory regimen sought by the Department." What that failed to mention is something that Director Young has already indicated, and that is that on their own volition the Department of Taxation came up with statutory language in an amendment that was incorporated into S.B. 81 (R1) when it passed. The language intends to do what has been addressed here—to reduce what is otherwise referred to as a "draconian and punitive statutory regimen." It is unfair and misleading to lead off this letter indicating that no such attempt or effort had been undertaken.

This letter continues to state, "The Company agreed to mute opposition before the Senate based on a representation by the Department that curing the deficiency in S.B. 81 (R1) would be accomplished while under consideration in the Assembly." That is inaccurate. What is unfortunate here is, oftentimes several bills will overlap. The bill, albeit a taxation bill, happens to overlap with another very important component, and that is the MSA. In the Office of the Attorney General we advise the Department of Taxation, but we also have attorneys who oversee our ability to continue to receive funds from the MSA. With that overlap here, our attorneys attempted to engage in conversations with the industry representatives who were seeking to amend this statute, vis-à-vis conversations with the Department of Taxation. I am loath to say this, but there were even efforts to exclude attorneys who would be able to speak to the effect the amendments being proposed would have on the MSA.

At my direction and at my instruction, we finally had a meeting where everyone was in the same room. At that meeting I made it perfectly clear that the Office of the Attorney General, as a unified front, could not agree to the amendment they were proposing, and that additional conversation about that amendment needed to be had—specifically and directly with the Office of the Governor—and that we would endeavor to have S.B. 81 (R1) pass as it was written and as it had been amended pursuant to my Deputy Attorney General's amendment. The notion that there was some representation by the Department of Taxation that the deficiency would be cured, as they refer to it, is inaccurate.

I will continue by noting that some additional comments are again misleading and offensive. The letter also states, "The Department and the Attorney General of Nevada assert that unless any inventory variance is punished, no matter how commercially insignificant, escrow funds will be at risk in a future arbitration with the manufacturers [page 2, ([Exhibit I](#))]." That is not the position of the Attorney General and is not the position of the Department of Taxation, and again is the reason why language was inserted that allows for consideration of variances. They just do not like the language we have put into this bill.

They further say, "Notably, neither the Department nor the Attorney General have furnished to the Company any documentary evidence to support this proposition." Frankly, that is not our burden. It is not our burden to demonstrate via documentary evidence a position we believe is legally sound, and in fact it is an illegal analysis that has led us to the conclusion

that the language they are suggesting in their amendment is going to negatively affect the MSA, which is what they acknowledge by saying, "a proposition the accuracy of which the Company has grave doubts given its nationwide grocery business experience." They have doubts. They disagree with our legal analysis and that is fine. But to imply what they have here, I believe, again, is erroneous and misleading.

I will also highlight that they say, "There has been no serious effort by the agency to negotiate a resolution." Can they really say that with a straight face—there has been no serious effort by the agency to negotiate a resolution—when for months the agency has sat with them to try to negotiate an opportunity and resolve this, and in fact have placed upon their own bill an amendment that accomplishes the goals they seek through their own amendment.

I will continue again by highlighting in the bullet points where they say, "The penalty scheme is based on a false premise that any inventory system can ever be perfect." Again, that is nonsense. That has never been the position taken by the Department of Taxation or by the Attorney General's Office, which is the reason why, yet again, the amendment that has passed from S.B. 81 (R1) from the Senate is that which we drafted ourselves.

The second bullet point says, "The over-whelming majority of States use a penalty system like that proposed here by the Company." We have asked them to present to us statutory language comparable to what they are trying to get put into Nevada law. The truth of the matter is, they cannot do it and have not done it. They presented language that does not accomplish, mimic, or demonstrate that what we are doing in this state is what other states have done, and we have asked for that on several occasions.

The part that really woke me up is a veiled threat of litigation. A veiled threat of a lawsuit will not deter the Department of Taxation or the Office of the Attorney General from defending the MSA. In the last bullet point [pages 2 and 3, ([Exhibit I](#))] is an issue that has never been raised, at least not to the Attorney General's Office, who would have to entertain a question as to whether or not this "penalty scheme" violates the *Nevada Constitution*. Again, I view this as nothing but a veiled threat to sue if this bill were to pass. I will say this: The Office of the Attorney General stands ready, willing, and able to defend this legislation if signed by the Governor. I will tender the mic now to my colleague, Ms. Bunker, as unfortunately, Madam Chair, I have to excuse myself. I will watch opposition testimony. To the extent this Committee wants a written response to anything that is stated in response to what I have just stated, I am happy to provide it.

**Chair Neal:**

Do you want any questions from our members, or do you want to leave that to Ms. Bunker?

**Aaron Ford:**

Ms. Bunker should say her piece and that may answer some of the questions you may have. If it is substantive about the bill, I am going to refer to Ms. Bunker and the Department of Taxation anyway. I just thought it was imperative I come talk about some of the contentions raised in this letter ([Exhibit I](#)).

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

I have a brief testimony to read into the record. As has been mentioned throughout session, the Nevada Department of Taxation has been working with counsel for McLane Company, Inc., on an amendment to S.B. 81 (R1). We have really broken it down to the single issue that exists, and that would be the Department of Taxation's ability to suspend or revoke a cigarette wholesale dealer's license if there is an inaccurate monthly tax return. What we are looking at is if there is a discrepancy between the number of cigarettes reported in the physical inventory and the number that should be in the inventory after accounting for monthly purchases and documented distributions.

The authority for the Department of Taxation to suspend a cigarette wholesale dealer's license is not new in this bill—it already exists in NRS 370.250. The Department of Taxation has been open to, and understands, McLane's concern that its license will not be suspended for good faith *de minimis* inventory variances that are traceable in the ordinary course of business. We feel great progress was made in the Senate. The Department of Taxation put forth Amendment No. 591, which addressed McLane's concerns articulated in their May 6, 2019, letter.

The Department of Taxation does note McLane's concerns that unintentional cigarette variances should not result in the suspension of a wholesale dealer's license. As has been mentioned numerous times, the factors in section 32, subsection 6 address those. I will not go through section 32, subsection 6, paragraphs (a) through (f) because they have been spoken to already. These mandatory considerations the Department of Taxation must undertake before suspending a license actually protect wholesale dealers from having their license suspended for variances that are traceable to the ordinary course of business.

By including McLane's proposed language, they believe that would protect them from losing their license as a result of the ordinary business losses incurred in good faith. However, section 32, subsection 6, paragraphs (c) and (d) protect McLane from losing their license for small discrepancies traceable to the timing of an inventory fluctuation. There is inventory where it is not reported at the end of the month, there are miscounts, and there are things that would not be punishable—delays of shipments and returns in transit that would result in these *de minimis* inventory variances.

Most significantly, however, is that McLane's safe harbor they have identified as a 0.75 percent threshold actually prevents the Department of Taxation from suspending the license of a cigarette wholesale dealer who is engaged in active misconduct, so long as that



conduct and the quantity of cigarettes fall below the safe harbor. The Department of Taxation has to be able to maintain its ability to suspend the license of a wholesale dealer if they are engaged in contraband cigarette dealings or tax evasion, as the failure to take such extreme action jeopardizes the state's MSA payments.

As Director Young noted, for the 0.75 percent safe harbor for 2018 numbers, we are looking at about 24 million cigarettes that would fall within that safe harbor. We believe the Department of Taxation has already amended S.B. 81 (R1) to protect the interests and rights of good players while retaining its ability to take sufficient action, specifically the right to suspend or revoke a license if there is intentional misconduct.

We know McLane has argued that their language should be adopted because the Department of Taxation's "penalty scheme is based on a false premise that any inventory system can ever be perfect." To the contrary, the Department of Taxation's own amendment to S.B. 81 (R1) acknowledges that variances can happen in the ordinary course of business and requires the Department of Taxation to consider the quantity of cigarettes at issue, while also giving the cigarette wholesale dealer the opportunity to explain the cause of the variance and any other mitigating factors.

Finally, McLane also argued that Nevada will join only one other state as an outlier state if the Legislature endorses the Department of Taxation's scheme [page 2, ([Exhibit I](#))]. This misstates both the nature of S.B. 81 (R1) and the enforcement powers of other states. Senate Bill 81 (1st Reprint) is not giving the Department of Taxation the authority to suspend or revoke a license for inaccurate reporting. As noted, that authority already exists in NRS 370.250. It is adding mandatory considerations for the Department of Taxation which protect industry and ensure grossly disproportionate penalty does not result from the reporting of a nonmaterial good-faith variance. Second, numerous other states have a broad ability to suspend a cigarette license for violations of their reporting statutes. As Attorney General Ford noted, we have not seen any language, even though asked for, that was evident that other states have included a safe harbor or any sort of provision that is similar to what is proposed. We believe section 32, subsection 6 is already going beyond what other state statutes contemplate by giving licensees an opportunity to present explanations and mitigating factors.

The Department of Taxation has been working extensively, since at least February, to formulate an amendment that protects the interests of industry while enabling the Department of Taxation to take appropriate action against illegal activity and diligently enforce the MSA. We believe amendment No. 591 achieves those goals and therefore should be passed as is.

**Assemblywoman Backus:**

In reading section 32, I want to ensure I am not missing another provision. If there is a violation, are they getting a notice and a hearing before a license is suspended?

**Hillary Bunker:**

You are reading that correctly. How this would work in procedure would be the Department of Taxation would issue a notice. There is actually a first provision that would be found in regulations, where the taxpayer has the opportunity to cure this violation, and then the Department of Taxation cannot suspend or revoke a license on its own. The matter would be set for hearing before an administrative law judge. The administrative law judge would make that decision. That is an appealable finding that can go to the Nevada Tax Commission, and subsequently can be moved out to district court.

**Assemblywoman Backus:**

On page 23, lines 39 through 41 [section 57, subsection 4, paragraph (b)], it states, "The wholesale dealer shall, upon discovery of any error in the report filed with the Department, promptly notify the Department and file an amended report that corrects the error." I am assuming that is something different than what we are talking about. Does that go to the report on the county balancing out the cigarette quantities versus the stamps, and does not actually apply to the tax return that we would be discussing under section 32, section 1, paragraph (a), or is that inclusive of both of those types of reports?

**Hillary Bunker:**

That section that relates to amending reports, it is all one monthly tax return—monthly tax report—so that would be any sort of amendment, be it additional stamps or additional cigarettes located. Any sort of amendment you wanted to make would be included. It is all one monthly return.

**Assemblywoman Backus:**

If someone did file an amended return to correct their numbers, would they still be subjected to suspension of their license, or would that be something that you guys would look at as falling within one of the six factors in determining whether the license would be suspended?

**Melanie Young:**

That is correct. We would look at that as a correcting action.

**Assemblywoman Backus:**

If I had heard that six other states had a similar statutory provision or regulation that is consistent with our amendment, I take it that would be false, considering you do not recognize even a single state making a similar law like this.

**Hillary Bunker:**

I believe your question is if we have identified any other states, or have been given other states that have this 0.75 percent or 1 percent variance. We have not identified any, nor have we been given any statutes that show us similar language to what is being proposed in the amendment today [page 4, ([Exhibit I](#)) and page 9, ([Exhibit J](#))].



**Assemblywoman Spiegel:**

In reading section 32, subsection 2, paragraph (c), where it talks about in the case of a second or subsequent violation, how the license could be suspended or revoked, a question came to mind about whether there was any time frame associated with when that second violation could occur, and in reading section 32, subsection 6, I did not see any consideration of time frame. If somebody has no violations for 25 years and then a violation occurs, it did not seem as if there was any place there they would get credit for good behavior for those 25 years. Am I missing it or was that not contemplated?

**Hillary Bunker:**

As far as suspension or revocation, not in that section. There is reference to a time frame, which is found in section 72, and that relates to the civil penalties. That gives a time frame of a second violation in 24 months, and then third and subsequent violations in 24 months, but that specifically relates to the civil penalty portion. I do not believe there is similar language in terms of a secondary violation for suspension or revocation.

**Assemblywoman Spiegel:**

Might you consider that?

**Melanie Young:**

Yes, that is something we would consider.

**Assemblywoman Cohen:**

Getting back to the safe harbor issue, are there any other industries we regulate that have to account for product where there is this type of variance that is being suggested—safe harbor for the variance?

**Melanie Young:**

I am not aware of any.

**Assemblywoman Cohen:**

In section 28, subsection 1, the annual renewal. I know that is blue language, but is that already existing language—that it is standard in this industry for the renewal to be once per year?

**Shellie Hughes:**

Yes, that is correct. It is already in statute for the cigarette provisions. We are just including it for the OTP provisions as well.

**Assemblyman Edwards:**

In section 32, as clear as they try to make it, it seems as though there is still a bit of inconsistency. I think it deals partly with the absolutist words that are used in certain parts. What I mean is this: Under section 32, subsection 1, paragraph (a), it talks about a "certification required by this chapter or files an incomplete or inaccurate report." If we take the absolutist approach and you are off by even one one-thousandth of a percent, you would

be in violation at this juncture. Under section 32, subsection 1, paragraph (b), it talks about "Fails to pay any tax owed upon cigarettes or other tobacco products." Again, the word "any" in there always makes me cautious because it is such an absolutist word. Then under section 32, subsection 1, paragraph (c), it says the "dealer of cigarettes and fails to cure any shortfall for which the wholesale dealer," it seems as though on the one hand you are being very absolutist and on the other hand you are saying "except" if you do this process you are not going to be suspended. Are you following me on that?

To me, it is not clear if there is a procedure here that gives due process for the impreciseness of human nature and the systems we put into place. Part of that comes from where you talk about, in the case of the first violation, you are going to get suspended for 60 consecutive calendar days, and in the case of a second, you are going to be suspended for 180 consecutive calendar days. Although the word "shall" is not in there, it seems to be inferred, which to your previous statement about you considering a certain time line, that might actually ensure people have a fair process, due process, so things can be fixed rather than suspended and revoked. Am I understanding that the intention here is to ensure small variances can be fixed without suspending or revoking licenses, and that there is understanding of the impreciseness of any accounting system?

**Melanie Young:**

There are several sections in there. Section 32, subsection 1, says the Department of Taxation "may," so there is some permissive language in here to allow us to work within the industry to identify their recordkeeping, and ensuring we still have some authority to take action if need be. The industry would have its due process rights in the way of any action we would take is appealable to an administrative law judge that could ultimately be appealed to the Nevada Tax Commission. There are multiple layers before action could be finalized in this instance, and we feel their due process rights would be accomplished through that.

**Assemblyman Edwards:**

Is there any place here that could insert the time line? You are looking at a monthly report. If the monthly report is coming at the end of the month, how much time do they have to discover any discrepancy, report it to you, amend the report, and fix it without placing themselves in jeopardy of suspension or revocation? Is that something we could add in?

**Melanie Young:**

The reports that are provided are due by the 25th of the month following the end of the month, so they have 25 days to submit that report to the Department of Taxation to identify any deficiencies they would have.

**Assemblyman Edwards:**

If they identify within that 25-day mark, how much time do they have to fix or cure it?

**Melanie Young:**

Are you asking if this would be after they submit the report to the Department of Taxation, how long would they have to cure anything?

**Assemblyman Edwards:**

Right. Is that something we need to clarify in the language?

**Melanie Young:**

My staff indicates it is 10 days they have to correct it.

**Assemblyman Edwards:**

During that ten days, is it like a grace period where they are not going to be suspended or revoked, and start losing hundreds of thousands of dollars, because that means the state loses a bunch of money as well? I think they said \$40 million per year in tax revenue.

**Melanie Young:**

That \$40 million is the MSA that the state receives, but if you have questions about how much the Department of Taxation receives in tax revenue for cigarettes, I could provide that information.

**Assemblyman Edwards:**

I would appreciate that. Again, I just do not want to lose \$30 million because they missed 50 cigarettes, or something of that nature.

**Hillary Bunker:**

In section 32, subsection 6, paragraph (a), the Department of Taxation actually considers the reporting and discipline record of the licensee within the previous 24 months, so there is a time frame built in. The Department of Taxation is looking back for the previous two years as to the activities of the taxpayer.

In section 32, subsection 6, paragraph (b), you are also asking what if someone amends it. The Department of Taxation is going to look at the timeliness of the licensee in correcting any inaccurate information. One thought is, did you catch this on your own or was it not caught until the Department of Taxation came out and did some sort of an audit? Did you self-identify? Again, in section 32, subsection 6, subsection (a), there is a built-in two-year window we are looking at.

**Assemblyman Edwards:**

So there is some room for them to correct the error?

**Hillary Bunker:**

That is correct. That is the intent of building these factors in—to give the Department of Taxation more room to evaluate, so they are not set into a statute that says if a report is inaccurate, you must do a warning and then you must suspend the license as the next step. This gives them more room and more factors.

**Assemblyman Hafen:**

I am trying to understand the problem we are addressing. If I understand everyone correctly, is it tax evasion and the distribution or selling of illegal property?

**Melanie Young:**

The bill was brought about to add clarifying language to the OTP section of the statutes, and that is what brought this about. In working with the industry, we added some provisions to this bill to be able to work with them on their reporting issues and we feel we can provide fair tax enforcement.

**Assemblyman Hafen:**

I know we have talked about the MSA. The way current law is written, are we in violation of the MSA, or are we okay currently?

**Hillary Bunker:**

We are not in violation of the MSA currently, but each session we end up with tobacco bills to try to increase our enforcement of the MSA.

**Assemblyman Kramer:**

I have more than one question. I will try to go through the sections where they are. You might want to take a couple of notes. On page 6, section 19, subsection 1, it says a person shall not engage in business without a license to do so. If I am in business as a retailer and sell cigarettes, and I am selling my business, if I sell those cigarettes on the shelf to the new owner, do I now need a wholesaler license to do that? With liquor in this state, if you are a liquor store owner or a bar, and you sell it to someone else, you cannot sell your inventory to the new buyer. I am asking for clarification here. Are you different than liquor or the same?

My second question is to section 19, subsection 7. It looks as if it is adding a retail dealer as something that you need to be licensed as. Is this the first time a retail cigarette seller has to be licensed, and if so, why? If someone was selling cigarettes, would they need to be licensed as a retailer without a specific location, or would that even be possible?

In section 21 there was a question about transporting cigarettes. When I was young, our family had a store in Fernley and we drove to Reno once a week buying items. We did not have a transport license, we had a retail license—not a cigarette retail license, but a retail license. We could go to a store and buy cases of cigarettes, then take them back to our store. I am questioning whether a license is needed to do this now—whether a person who is selling tobacco products or cigarettes would need an additional license for transporting.

On page 8, section 22, subsection 2, it talks about the name and address of the applicant, and anyone with a 10 percent ownership. I presume this is for any of these licenses, including retail. I am asking for the purpose of why that detail is needed.

**Chair Neal:**

Assemblyman Kramer, I am going to let you ask your questions. Let them get this first set answered.

**Melanie Young:**

I will take your first question, which is the selling of the inventory from a business—if an individual sold their business, could they sell the inventory. My staff tells me the answer is yes, but they would have to provide the invoices of what was purchased during the transition of the store, and the new store owner would need to become licensed.

**Shellie Hughes:**

I believe your second question had to do with a retail cigarette license and if they are currently required to be licensed. Yes, retail cigarette dealers are required to be licensed currently. This section is combining provisions for cigarettes and OTP provisions. So existing language applied for cigarette dealers, but we are trying to combine the two to make them uniform.

**Hillary Bunker:**

The question you asked about loose cigarettes—individual cigarettes. You actually are not permitted to sell those in the state, so I would say yes, you would need a retail license, but that would be considered contraband, and in NRS Chapter 202 you are not allowed to sell cigarettes in any sort of package that does not originate with the manufacturer, so you cannot sell individual cigarettes. While you would need a retail license, you are not permitted to do that activity. Ms. Hughes already answered your question, but the cigarette retail licenses are not new. I will skip the transport question and leave that to the Department of Taxation.

Your question about the 10 percent ownership and some of those factors in section 21, that language is also not new. That has existed in statute. It is being put in for any sort of applicant. You are looking at who the owners of the business are and if they owe taxes, have been convicted of a tobacco crime—anything like that—to ensure we are not licensing what would be a bad player in our state who may have lost their license in another state.

**Shellie Hughes:**

I will address the transportation issue. You are allowed to transport product if you are a holder of a retail license or a wholesale license.

**Assemblyman Kramer:**

On page 10, line 28 [section 28, subsection 3], it talks about an annual license fee of \$150. Is that fee already in existence at \$150? I do not remember that being a fee, so it has been added in the last 50 years since my family was in the business, and I expect a lot of things have changed. That just seems a little strange to me.

I had a question on section 32, subsection 1, paragraph (c), where it says "cure any shortfall." It seems to me the cure is to pay the missing tax on anything that is not found, although contrary to that might be if something showed up that had been missing before and came back. There would be a reversion of that tax, or a rebate of that tax. If the goal is to stop the avoidance of tax, it seems as though the answer should be fixed more on what the tax is or should be, and if something is missing, allowing the payment of the tax on something when it is caught, when it is found, when it is discovered.

My next question has to do with section 35, where it talks about the wholesale value of \$5,000, and in section 50, where it says you have to have a wholesale value of \$10,000. I spent a long time in retail and I am a business student. One of the tricks you try to do is not have any inventory when you buy it from where you are getting it and when you deliver it, you do not want to have inventory. One of the goals is to minimize your inventory. Why would we be burdening wholesalers where you are required to keep inventory on hand?

I have one more question and that deals with section 80. I realize these bonds are not terribly burdensome, but a surety bond is something you pay for every year. If I could take a savings bond or U.S. Treasury bond and deposit it, I earn interest on that and it is enough to cover any bond, and you would be a co-owner of the bond, so to speak. It seems as though you are saying we do not want you to earn money on this; we want you to pay money to stay in business every year. It seems as though it is the opposite approach as to what we should have for something like that.

Further, if you are putting this in section 80, subsection 1, paragraph (c), subparagraph 4, it seems as though it negates section 80, subsection 1, paragraph (c), subparagraphs 1 and 2. It is strange why you would have subparagraph 4, and allow subparagraphs 1 and 2, when subparagraph 4 says there is not going to be any subparagraph 1 or 2.

**Melanie Young:**

To your question regarding the \$150 fee, I believe that has been in statute since 1977 and has not been changed since then. To your question regarding curing the shortfall, I think that section will allow multiple options for the Department of Taxation to work with the reporting taxpayer.

**Shellie Hughes:**

The inventory requirement in section 50 is currently in statute under NRS 370.090 for cigarette wholesale dealers. They do have to keep wholesale value of inventory of at least \$10,000. That is current law. For section 35 we added that in for OTP and established a value of at least \$5,000. This is to prevent those individuals who are buying for home consumption who would sell, who are not licensed, if you are required to have a \$5,000 inventory requirement.

**Assemblyman Kramer:**

In my mind, when you are dealing with OTP, I am thinking fairly expensive cigars. You are dealing with something that has a time value to it. You are trying to turn this over as fast as you can and not let it get stale, but then you have to keep \$5,000 in your humidifier at home, at your office, or at your store. That seems so onerous to me. You are saying do not be in this business. With cigarettes and so many brands out there, and they do not go stale as fast, I can almost see that one, but even at \$10,000 no one would have anywhere close to that for personal use. That seems really unjustified to me. Are you sure you have to have that in there? For snuff or chewing tobacco, I could see it being reasonable, but I just cannot see it if someone only dealt in expensive cigars.

**Chair Neal:**

It might be helpful to explain why you rolled over provisions to deal with OTP because they are similar structures. Give us your reasoning for that \$5,000 you have had on one side and how it works with OTP. I think it would be very helpful. I know you have given us a lot of reasoning, but I think you just need to get us straight on the rollover.

**Shellie Hughes:**

As you all are aware, cigarettes and OTP are a highly regulated industry. We have to have strong enforcement in this area, so it is very important for us to have consistency and clarity in the ways of the provisions in NRS Chapter 370. In order for us to adequately enforce some of these licensees and those who do not have a license, it is important for us to have these strong enforcement provisions. We realize with cigarettes, even though we do have the MSA, that we need to recognize OTP are also being sold here illegally as contraband and we have to ensure we catch those.

**Chair Neal:**

Is the MSA directing the Department of Taxation or other states to have what we are now looking at and seeing as onerous provisions? Are they giving you guidelines on how this should be written, which is the reason why you are continuing to structure in the same exact way. The MSA in general, is it telling you to do it this way?

**Melanie Young:**

No. The MSA is not telling us to do it this way. The intent of the \$5,000 inventory is to ensure the hobby consumer is not now purchasing and selling and evading taxes.

**Hillary Bunker:**

I had one point to clarify on curing the shortfall. The reference to NRS 370.683 is a reference to escrow. What the shortfall refers to is, if you have a manufacturer who does not pay their escrow, there is joint and several liability to go after a wholesale dealer. That is why that one seems a little less specific and does not reference taxes because it is actually based on an escrow payment under the MSA.

**Shellie Hughes:**

Section 80, subsection 4 was added in because for our other tax types—in particular sales tax—we have this exact language. We do not accept bonds, savings certificates, certificates of deposit, or investment certificates in lieu of a surety bond for sales tax.

**Assemblywoman Benitez-Thompson:**

Is not the point of the surety bond in section 80 so that there is something for the Department of Taxation to claw back if the tax is not paid? It should not in any way be seen as an investment by the business that would grow. That is a pot of money for us to recover when and if we need to. That is why we have gone that route. Is that correct?

**Shellie Hughes:**

You are correct.

**Assemblyman Kramer:**

I have done this before, where we have established a U.S. Treasury bond that is owned by both parties. It cannot be sold until the Department of Taxation would sign off on it. I realize we are not talking much money. I will let it go. It just seems antibusiness. It is "do it our way or hit the road." You have the money there, why cost money rather than let it ride with actually benefiting the business owner as well? I will let it go. I have one more thing to go through.

**Chair Neal:**

What section is it?

**Assemblyman Kramer:**

Section 80.

**Chair Neal:**

On the surety bonds.

**Assemblyman Kramer:**

Yes.

**Chair Neal:**

Did you already ask it?

**Assemblyman Kramer:**

She was answering it.

**Chair Neal:**

I will have you hold your question, Assemblyman Kramer, and when they come up for closing remarks, we will get your section 80 answer.

I think we have had a significant education today. If any of the members stay on the Assembly Committee on Taxation and have questions on OTP or the MSA, I am going to be upset.

**Assemblyman Kramer:**

I will hold my question for later.



**Chair Neal:**

This is a big bill and we did start late today. I will now shift to those in support of the bill.

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

We are in support of the bill. We are very appreciative of the Department of Taxation's efforts to clarify and modernize its requirements, processes, oversight, and enforcement of tobacco license holders, including the provisions in the bill that would impact wholesale dealers and the requirement for retailers of OTP to procure a tobacco retailer's license. We testified in support of this bill in the Senate, and we wanted to be on record in support in your house.

**Barbara Smith Campbell, representing Core-Mark International, Inc.:**

Core-Mark International, Inc., would like to offer their support of S.B. 81 (R1), along with the Amendment No. 591 that came over from the Senate to your Committee. I am not going to read my entire letter into the record today ([Exhibit K](#)), but would like to make some comments. I am very pleased the topic of the variance has come up, and that the Department of Taxation and the Attorney General have been able to clarify their understanding of the variance. I am hopeful that section 32, subsection 6, paragraph (d) offers the type of guidance to both the Department of Taxation and the wholesalers without risking licensure by the wholesalers or risk of loss of tax revenue to the state.

There are 12 states that do recognize variances. Those are on their forms, and as part of the tax payment formula, if you do have a shortage or a deficiency, you must pay the tax on that deficiency. I believe Core-Mark is in favor of that type of variance language if this Committee is willing to look at it.

**Chair Neal:**

Is there anyone else who wishes to testify in support of S.B. 81 (R1)? [There was no one.] Is there anyone who wishes to testify in opposition to S.B. 81 (R1)?

**Dan R. Reaser, representing McLane Company, Inc.:**

I submitted prefiled written testimony yesterday and I ask that it be made a part of today's record ([Exhibit I](#)). We also gave copies of that letter to your secretary, so I think it is available to you. Moreover, the letter of opposition we submitted to your Chair yesterday ([Exhibit I](#)) was removed from NELIS [Nevada Electronic Legislative Information System], and we would ask that it also be made an exhibit to the record.

I am going to summarize the key points of my written testimony ([Exhibit J](#)). I am not going to read it to you. I have too much respect for committees, having appeared since 1981 before the Legislature, and having represented McLane [McLane Company, Inc.] since 1994.

As I summarize, I will try to correct what I think are some of the misstatements or misimpressions that may have been left with you through the questions and answers you have already had.

First, by way of background, McLane is a national supply services company. It aggregates and delivers grocery products from thousands of suppliers to over 46,000 retail locations such as drugstores, warehouse clubs, convenience stores, and similar mass merchants, including 335 retail locations here in Nevada.

McLane does oppose S.B. 81 (R1) as set forth in the first reprint. We do, and we stand by this, because we have been unsuccessful for weeks of negotiations with the Department of Taxation to resolve a problem in section 32. I want to also make it very clear that many of the provisions in the first reprint before you are provisions we wrote and suggested to the Department of Taxation.

You need to correct this statutory scheme you have if you want to go forward. We have tried to be a responsible corporate citizen through this entire process, and while I respect Attorney General Ford greatly, I have a very different view of some of the facts. I will get to those in a moment.

We view the Department of Taxation to be stubbornly resisting what is a modest change that will protect wholesale dealers from what I do feel is a draconian and punitive scheme. In discussions with the Department of Taxation, we understand they feel they need this to protect the MSA, and McLane has gone the extra mile, compromising on many concerns we have about this bill—I am not going to go through all of those concerns—because the focus is section 32, subsection 2. The Department of Taxation may tell you privately, and I think suggested tonight, that there are many benefits for wholesale dealers in this bill. Bluntly, because of not solving this one problem, McLane does not share that rosy depiction of this legislation.

What are the problems with S.B. 81 (R1)? The penalty scheme devised by the Department of Taxation in section 32, subsection 2 applies anytime a wholesale dealer reports that the inventory of cigarettes in a warehouse differs from the prior reporting period, and that difference cannot be exactly accounted for to the single cigarette by a sale, a return, or recorded spoilage during that period. What is this thing we are talking about that is a variance? It is simply the difference in the physical count of the number of cigarettes in McLane's warehouse between one month and the succeeding month—that is the variance. These variances, as Ms. Bunker suggested, can be for a variety of reasons, including the timing between when the inventory is taken and the month end reporting period, which does not sync up with the end of the month. It is the 25th of the month.

There can be fluctuations caused by delays of shipments and returns in interstate commerce. There can be inadvertent overages or shortages in deliveries to the retail purchasers, and quite frankly, there is also human error in counting inventory. I did that, working my way through college for Lucky Stores in southern California. Each night we had to do inventory of what was in that warehouse, and it is not always perfect. It changed from day to day because people missed something or miscounted. It happens. That is why we have said there must be a safety valve for immaterial inventory variances. We have suggested that it is 0.75 percent, or less of a reported sale. The Department of Taxation has countered that unless every inventory variance is severely punished, no matter how commercially insignificant, Nevada risks not collecting monies due from the tobacco manufacturers under the qualifying escrow, and fears that this will be an issue in a future arbitration. I want to make a couple of points about what was suggested to you as a cure in section 32, subsection 6, and I think this is very important.

**Assemblywoman Benitez-Thompson:**

I am getting frustrated by the circling we are doing here. As I read section 32, subsection 2 [line 17], it says the Commission [Nevada Tax Commission] "may." I am seeing that in the first part that applies to section 32, subsection 2, paragraphs (a) and (b), and down to section 32, subsection 4. I see "may," I see "knowingly," and I see "negligently." Every situation you are talking about, what if someone counted wrong or if there is an error, to me that does not comply with knowingly or negligently, that we are indeed empowering the Department of Taxation to look for practices in which they are knowingly and negligently counting these, so I do not think that errors fall in there.

When you look at section 32, subsection 5, this is where we see, "The Department shall." Once again you see "shall" paired with "knowingly" and "negligently."

I feel it is a privilege to be able to conduct the type of business being conducted around cigarettes and everything else that this accompanies in the state. It is not a right. I do not feel as a legislator, sitting here, that it is my job to make this the easiest it can be for your business. I really feel like it is my job as a legislator to protect the public, and in order to do that, I need to empower certain departments to have certain regulations and firm laws—a bright line on certain laws—so when I leave session, I know I have empowered these departments to do their jobs. I do not think there is anything else happening with this legislation besides that.

**Chair Neal:**

I do not expect you to respond to what Assemblywoman Benitez-Thompson is saying. She is making some good points. We are at a circular point in it. If you have some final comments, which was on the curing, I will let you state that, then we will move to the next person in opposition. I do want to hear your curing comments.

**Dan Reaser:**

On the curing issue, if I am understanding the Chair's question, I think that goes to what Ms. Bunker started to correct at the end. I think there was a misconception in a question from Assemblyman Edwards that section 32, subsection 1, paragraph (c) somehow allows a cure in an inventory report. That section does not allow a cure in an inventory report. That is talking about a cure in a failure to pay by a manufacturer of monies into an account administered through the MSA. To the extent legislators are reading section 32, subsection 1, paragraph (c) as somehow curing the problem with section 32, subsection 1, paragraph (a), that is inaccurate. It is also very inaccurate to tell this Committee that section 32, subsection 6, paragraphs (a) through (f) are provisions that will be used by the Department of Taxation to decide whether to bring an action. That is not what this section says. The factors that must be considered in section 32, subsection 6, paragraphs (a) through (f) are factors to be applied in determining which of the penalties to be imposed—a fine, a suspension, or a revocation. They are not, as represented to you, provisions that allow the Department of Taxation not to bring the action. This is a very tangible issue for McLane, because as we sit here today, it is defending a suspension proceeding being brought by the Department of Taxation. Contrary to Attorney General Ford's suggestion that we were threatening litigation, had he read the defenses presented in the administrative proceeding, the fact that this scheme is unconstitutional, or can be applied unconstitutionally, under the excess fines clause and the due process clause, was raised in those proceedings, and the Department of Taxation has put those proceedings on hold and is now in front of you trying to change the statutory scheme, in our view, to make it more onerous.

As I put forward in my testimony ([Exhibit J](#)) and my letter ([Exhibit I](#)), there are three main reasons why this bill should not be approved if our amendment is not inserted. You have heard all three.

**Chair Neal:**

We have heard the letter—we heard it discussed by Attorney General Ford. We all have a copy ([Exhibit I](#)). I do not want you to repeat it. We are clear on what you are opposing. You said section 32, subsection 2, is the main crux and issue. You stated in your letter, as well, about the due process issue and the excessive fines. So I do not think we need you to repeat anything that has been written, stated, or addressed in several different ways.

**Dan Reaser:**

I would like to at least address what I think is a misconception about our proposed amendment. The amendment we have provided in exhibit 1 to our testimony [page 9, ([Exhibit J](#)), and attached to the letter we submitted [page 4, ([Exhibit I](#))] is simple and balanced. The Department of Taxation and the Office of the Attorney General say they need the power to penalize even for a minor immaterial variation. The proposal we gave them

does exactly that. It has a penalty provision in it. It punishes for minor variations, defined as equal to or less than 0.75 of one percent, and the measure of that penalty is what would have been collected in cigarette taxes had those cigarettes been sold and stamped in Nevada. It is a very responsible set of fines.

Our proposal does not change any other part of this bill that allows the Department of Taxation to go after people who are evading their taxes, who are bad actors, who have done other things in violation of the act. Our amendment is surgically written to address this singular issue, and all of the other violations are subject, unchanged, to the provisions the Department of Taxation is seeking. We ask you not to report this bill out of Committee without our amendment. We stand ready to discuss this further with you, either individually or by Committee, and we appreciate the opportunity to discuss this tonight, even if abbreviated.

**Peter Krueger, representing Cigar Association of America:**

We stand in opposition to portions of S.B. 81 (R1). First, we need to clarify that cigars and OTP are in no way part of the MSA. In no way do the provisions of the MSA apply to OTP, or in our case, cigars. Our concerns with this bill are somewhat different than those of logistics companies such as McLane. We are in support of different objects than have been addressed so far.

The Cigar Association of America (CAA) is a manufacturers group representing premium and popular-priced cigars. We believe S.B. 81 (R1) does not solve Nevada's growing illicit trade problems, and those really are mostly in Las Vegas, in and around McCarran International Airport. We know this problem is real and it is only going to grow in our estimation despite the efforts of this bill.

Our concerns with the bill are divided by the two types of cigars referred to above, which are popular-priced and premium cigars. I will say the Department of Taxation has met with us numerous times and has considered and rejected our amendments. We think this bill has a couple things I want to get on the record and make clear.

Premium cigars, in section 32, remain our concern. This section prohibits the manufacturer representatives in Nevada from storing cigars in a climate-controlled unit. While we understand and support the need for the Department of Taxation to have unfettered access to these locations, we believe the definition of "warehouse" in section 16 is vague and left open to the Department of Taxation's interpretation of what is and what is not a warehouse. An agreement to discuss further this definition with the Department of Taxation would be very helpful and would reduce some of our concerns.

The other area I want to make clear is that we understand what the Department of Taxation is telling us. This concerns the transport of OTP. We understand the bill to say that it is permitted by a wholesaler dealer's licensee, and this practice will continue. The second area that we want to make clear we understand is our understanding of section 35, which we have talked about the minimum inventory level, that it is not required by individual agents—this would be individual, in our case, agents of cigar manufacturers—but it is not required by individual agents but only persons licensed as wholesalers. The last portion of this is, it is not required by out-of-state licensed wholesalers who do not have a business in the state.

Finally, if I am correct in my interpretations and meetings with the Department of Taxation, these two interpretations for our client would go a long way, with the exception of trying to work out what a warehouse is and what a warehouse is not. We think we could come to a mutually acceptable solution regarding the storage area in section 32, and thus the Department of Taxation gets adequate enforcement, and cigar manufacturers, premium and otherwise, who do use logistics companies such as McLane, will be able to move forward ([Exhibit L](#)).

**Chair Neal:**

Is there anyone else who wishes to testify in opposition to S.B. 81 (R1)? [There was no one.] Is there anyone who wishes to testify as neutral on S.B. 81 (R1)? [There was no one.] I would ask the Department of Taxation and Ms. Bunker to come to the table for any closing remarks.

**Melanie Young:**

Thank you for your time in hearing S.B. 81 (R1) tonight and hearing all the comments that have been provided. The Department of Taxation has worked diligently with every industry member to hear their concerns, and we have addressed them in the bill you have before you. Currently the statute does not allow for any exceptions of reporting issues and this bill provides at least six different options for the Department of Taxation to be able to work with the industry. As you know, the Department of Taxation has the responsibility to enforce the tobacco reporting and collect the taxes fairly and efficiently, and that is what we attempt to do here.

**Chair Neal:**

I would like you to send the Committee some responses, addressing some of the things brought up on the record. Please address the OTP around cigars. Address Assemblyman Kramer's question on section 80. There was also the due process piece that came up again. Address section 32—after a notice and a hearing—where you got that because clearly that is an indication there is a notice and then there is a hearing.

I think we are clear, but once you submit that letter explaining some things, we see the permissiveness of "may"; we also see "shall," "negligently," and "knowingly." As this bill moves through, it would be helpful to get the reasoning around why you put "knowingly" and "negligently," because you wanted to have some specific intent there, and also wanted to deal with a mistake and trying to help the Committee navigate that.

I do not know if you intend to have further conversations. Some individuals need to understand the provisions with the series of "mays," "negligently," and "knowingly." Ms. Bunker, do you have any final closing remarks?

**Hillary Bunker:**

No.

**Chair Neal:**

I will close the hearing on S.B. 81 (R1) and open the hearing for public comment. Is there anyone who has public comment? [There was no one.] We are adjourned [at 7:48 p.m.].

RESPECTFULLY SUBMITTED:

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Gina Hall  
Committee Secretary

APPROVED BY:

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Assemblywoman Dina Neal, Chair

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "IFTA in Nevada," presented by Cindy Arnold, Tax Program Supervisor, Motor Carrier Division, Department of Motor Vehicles.

[Exhibit D](#) is a collection of resolutions and letters in support of Senate Bill 48 (1st Reprint), submitted by Dagny Stapleton, Executive Director, Nevada Association of Counties.

[Exhibit E](#) is a table titled "NACO SB 48 - 5 Cent Diesel Tax Generation in Rural Counties," submitted by Dagny Stapleton, Executive Director, Nevada Association of Counties, regarding Senate Bill 48 (1st Reprint).

[Exhibit F](#) is a document titled "SB 48 Rural Diesel Tax Bill, What It Does and Does Not Do," submitted by Mary C. Walker, representing Carson City, Douglas County, Lyon County, and Storey County, regarding Senate Bill 48 (1st Reprint).

[Exhibit G](#) is written testimony submitted by Pete Olsen, Commissioner, District 2, Churchill County, in support of Senate Bill 48 (1st Reprint).

[Exhibit H](#) is a letter dated May 6, 2019, submitted by Rex Steninger, Chair, Elko County Board of Commissioners, in support of Senate Bill 48 (1st Reprint).

[Exhibit I](#) is a copy of a letter and proposed amendments dated May 6, 2019, submitted by Dan R. Reaser, representing McLane Company, Inc., in opposition to Senate Bill 81 (1st Reprint).

[Exhibit J](#) is written testimony and proposed amendments dated May 7, 2019, submitted by Dan R. Reaser, representing McLane Company, Inc., in opposition to Senate Bill 81 (1st Reprint).

[Exhibit K](#) is a letter dated May 6, 2019, authored by Helen S. Hayes, Vice President, Tax and Government Affairs, Core-Mark International, Inc., submitted by Barbara Smith Campbell, representing Core-Mark International, Inc., in support of Senate Bill 81 (1st Reprint).

[Exhibit L](#) is written testimony submitted by Peter Krueger, representing Cigar Association of America, in opposition to Senate Bill 81 (1st Reprint).