

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

**Eightieth Session
May 23, 2019**

The Committee on Taxation was called to order by Chair Dina Neal at 6:23 p.m. on Thursday, May 23, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shea Backus (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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



OTHERS PRESENT:

Susan Brown, Director, Office of Finance, Office of the Governor
Natha C. Anderson, President, Washoe Education Association
Chris Daly, Deputy Executive Director of Government Relations, Nevada State Education Association
Annette Magnus, Executive Director, Battle Born Progress
Lalo Montoya, Political Director, Make the Road Nevada
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Marlene Lockard, representing Service Employees International Union Local 1107; and Nevada Women's Lobby
Carter Bundy, Political Action Representative, AFSCME International, Albuquerque, New Mexico
Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees
Jared Busker, Associate Director/Government Affairs Manager, Children's Advocacy Alliance
Brittany Walker, representing The Rogers Foundation; and Con Edison Clean Energy Businesses, Inc.
Amanda Morgan, Legal Director, Educate Nevada Now
Gariety Pruitt, Political Director, Nevada Conservation League and Education Fund
Nhi "Courtnhi" Vo, Senior Civic Engagement Manager, Asian Community Development Council
Maria-Teresa Liebermann, Private Citizen, Las Vegas, Nevada
Reverend Mike Willoughby, Private Citizen, Las Vegas, Nevada
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
Miranda Hoover, representing Reno Sparks Chamber of Commerce
Melanie Young, Executive Director, Department of Taxation
Shellie Hughes, Chief Deputy Executive Director, Department of Taxation
Michael Hackett, representing Nevada Tobacco Prevention Coalition; and Nevada Public Health Association

Chair Neal:

[Roll was taken and Committee rules and protocol were reviewed.] We are going to go out of order today. I will open the hearing on Assembly Bill 538.

Assembly Bill 538: Revises provisions governing certain taxes. (BDR 32-1199)

Susan Brown, Director, Office of Finance, Office of the Governor:

I am here today to present Assembly Bill 538. This bill is a key part of the funding plan for the *Executive Budget*. First, I will describe the current law, and then I will describe how this bill amends current law.

As the Committee is aware, under current law a commerce tax is imposed annually on each business entity with gross revenues exceeding \$4 million pursuant to *Nevada Revised Statutes* (NRS) Chapter 363C. The rates range from 0.051 percent to 0.331 percent of the gross revenue earned in the state of Nevada exceeding \$4 million, depending on the primary industry category or NAICS [North American Industry Classification System] code assigned to the business. Businesses that are required to pay the commerce tax are entitled to a credit of 50 percent of their commerce tax liability against their modified business tax (MBT).

Existing law also imposes a payroll tax, also known as the MBT, on financial institutions and mining companies that are subject to the net proceeds of minerals tax. That payroll tax is 2 percent of wages paid by the financial institution or mining company paid during each quarter, pursuant to NRS Chapter 363A. The payroll tax assessed on other business entities is 1.475 percent of wages paid, excluding the first \$50,000 during each quarter pursuant to NRS Chapter 363B.

However, there is also a rate adjustment procedure pursuant to NRS 360.203 that requires the Department of Taxation to determine the combined revenue from the commerce tax, payroll taxes, and bank branch excise tax from the preceding year by September 30 of each even-numbered year. If that combined revenue exceeds the Economic Forum's forecast by more than 4 percent, then a prospective trigger exists to reduce the MBT. Any reduction to the MBT would take effect on July 1 of the odd-numbered year following the even-numbered year in which the rate adjustment is calculated.

So, by September 30, 2018, the Department of Taxation determined that in fiscal year (FY) 2018, the revenue realized from the combined commerce tax, MBT, and bank branch excise tax collections totaled \$786.5 million, while the forecast for FY 2018 was \$714.5 million. Combined collections were 10.1 percent above the forecast. If the trigger were to apply, the revised MBT rate for mining and financial institutions would be reduced to 1.853 percent, and 1.378 percent respectively for all other businesses effective July 1, 2019.

Assembly Bill 538 repeals the prospective trigger and continues the MBT rate at 2 percent for mining and financial institutions under NRS Chapter 363A, and 1.475 percent for all other businesses under NRS Chapter 363B. Continuing with the same MBT rate yields approximately \$100 million in revenue over the 2019-2020 biennium that can be utilized to fund important priorities of state government, including K-12 education, higher education, health care costs, and other necessary operating expenditures. That concludes my presentation and I am happy to take questions.

Assemblyman Edwards:

Can you explain a little more about the trigger you are repealing?

Chair Neal:

Would you like Mr. Guindon to chime in?

Susan Brown:

That would be great.

Russell Guindon, Principal Deputy Fiscal Analyst:

If I understand Assemblyman Edwards' question, it is to explain a little more how the MBT rate reduction calculation works. Is that correct, Assemblyman Edwards?

Assemblyman Edwards:

What exactly causes it to be triggered and what are the differences between the MBT and the commerce tax collections?

Russell Guindon:

Let me go through it and you can let me know if I have covered your question. The MBT rate reduction provision was an element of Senate Bill 483 of the 78th Session as part of the tax package from that session, as codified in NRS 360.203, as Ms. Brown said. Every even-numbered year the Department of Taxation is required to look at what the actual collections were for the commerce tax, all pieces of the MBT—nonfinancial businesses, financial institutions, and mining—plus the branch bank excise tax, which is a small revenue but under the law it got looped into the calculation. Plus, it accounts for any tax credits that are applicable under law that can be taken against the MBT. Specifically, under the provisions for the commerce tax that were approved, taxpayers who have commerce tax liability are allowed to have a credit up to 50 percent of that commerce tax liability back against their MBT liability. Those are all the revenue pieces that are part of the calculation.

Again, as it was explained, the Department of Taxation is required to look at what the actual collections were for that even-numbered fiscal year and determine if those collections were more than 4 percent over the forecasted amount. As it was stated, that actual collection for FY 2018 ended up being about 10 percent over the forecast, so clearly it was over the 4 percent threshold. Then, under the provisions in the law, the Department of Taxation is required to look at the amount that is over the 4 percent and use that to figure out how to proportionally reduce the MBT rates, such that the collections would have been equal to 4 percent more than the forecast. Out of that calculation, the Department of Taxation determined the MBT rate on nonfinancial businesses was to go from 1.475 percent to 1.378 percent. Then the MBT on mining and financial institutions was calculated and determined to go from 2 percent to 1.853 percent. Those were the rates that would become effective on July 1, 2019, based on the provisions in NRS 360.203.

Assemblyman Edwards:

I am tracking what you are saying. I guess the question is, given that there is a 10 percent overage from the expectation, is this bill essentially eliminating the trigger—so we basically keep the money but do not reduce the rates?

Russell Guindon:

That is a good question and a little more difficult to answer. Part of the reason for the overage, as you referred to it—the 10 percent actual collections that were on the forecast for FY 2018, is the commerce tax is still a new tax, and remember, you are comparing a forecast to actual. It was one of the elements that drove the overage, again using that word, the credits that were forecasted to be taken from the commerce tax back against the MBT and the actual amount that was taken. Again, with little experience, the forecasted amount of credits for the commerce tax that would be taken against the MBT was significantly higher than what actually was taken for that FY 2018 reference period under the law for doing the calculation.

Assemblyman Edwards:

But does the bill itself remove the trigger that would create the new calculation to reduce the MBT?

Russell Guindon:

Yes. Assembly Bill 538 repeals the MBT rate calculation provisions—NRS 360.203. The bill would maintain the current statutory rates effective going forward, and then also repeal the MBT rate reduction calculation provisions, that is NRS 360.203.

Assemblyman Edwards:

So if this passes, we keep the money but do not reduce the rates in the future?

Russell Guindon:

That would be the result. The rates would stay the same and the Department of Taxation would no longer have a statutory requirement to do the rate reduction calculation going forward.

Chair Neal:

Have we done anything around adjusting the MBT in prior sessions?

Russell Guindon:

Do you mean with regard to changes to the structure or rates of the tax?

Chair Neal:

Yes.

Russell Guindon:

Yes. I do not remember them all off the top of my head, but the MBT was first put in place in the 2003 Special Session, and since then I think it may have been amended almost every session, except for probably 2017 and here in the 2019 Session, except for the rate reduction calculation. The MBT on nonfinancial businesses, under current law, the first \$50,000 of the quarterly wages are exempt from taxation. That threshold has been varied, as well as the rate has been varied over the sessions. If you need that information, I can look it up. The MBT rate, from memory, prior to the 2015 Session for nonfinancial businesses, I believe was 1.17 percent on any quarterly wages over \$85,000, and then with the tax package that was approved in the 2015 Session with S.B. 483 of the 78th Session, it went to the 1.475 percent on any quarterly wages over \$50,000.

Chair Neal:

Maybe after the hearing we can provide some education on how the MBT has changed for several sessions, at least since 2003, and how the rate has been adjusted and increased, and used in some form or another in terms for the *Executive Budget*.

Assemblyman Hafen:

If the bill does not get passed this session and the reduction were to take place, and later in the future we exceeded the forecast, would we then see another reduction in the future, or under current law is it just a one-time correction?

Russell Guindon:

Yes. If A.B. 538 is not approved such that it becomes law, the rates that the Department of Taxation determined would become effective July 1, 2019, but also the rate reduction calculation provisions in NRS 360.203, would stay in law. The Department of Taxation would then be required to do the calculation again in September 2020, based on the FY 2020 actual collections in relation to the Economic Forum's May forecast. Again, if the actual collections came in by more than 4 percent over that forecast, they would have to do the determination of how much the rate should go down under those calculations.

Assemblyman Hafen:

So this bill would be increasing revenue to the state in perpetuity.

Susan Brown:

I believe that is correct.

Chair Neal:

Members, are there any additional questions? [There were none.] I will now accept testimony from those in support of A.B. 538.

Natha C. Anderson, President, Washoe Education Association:

We are in support of A.B. 538 and ask your support for the continuation of this funding formula. As many of you know, our schools are in dire need of finances. The loss of this would impact us severely. I am just going to speak about Washoe County at this time. The budget that was adopted by our school board of trustees just recently had a \$17.76 million budget deficit. With the loss of this, our class sizes would become larger and the distance for our busing area would have to grow. There could even be a decrease in our employees. I just ask, in the interest of time, for your bipartisan continuation of support for this very important element for our funding.

Chris Daly, Deputy Executive Director of Government Relations, Nevada State Education Association:

The Nevada State Education Association supports A.B. 538 to maintain business tax rates so Nevada can continue its efforts to sufficiently fund public education ([Exhibit C](#)). In February and again yesterday, hundreds of educators from across Nevada rallied under the banner of "Red for Ed" to draw attention to chronic underfunding of public education. Despite recent efforts, Nevada continues to rank near the bottom of states in most public education metrics. In the 2018 Quality Counts report from *Education Week*, Nevada ranked 47th in per-pupil funding and dead last in both class size and overall education quality. After a 2017 legislative session with modest increases to public education funding, school districts across the state continue to struggle with serious budget deficits.

Today, school districts are projecting shortfalls, like Washoe County, for the upcoming biennium. There are discussions of possible educator layoffs, a risk of moving to even larger class sizes, and higher ratios for our other licensed education personnel. The Kenny Guinn Center for Policy Priorities recently released a report showing a \$107.5 million combined budget shortfall for school districts for the next fiscal year. This is due in large part to per-pupil base funding increases that are outpaced by increases in operating costs. It is important to keep in mind these financial uncertainties for our schools are based on a budget proposal which assumes nearly \$100 million in revenue from the passage of this bill for the upcoming biennium. If this bill is not passed, our schools will suffer the consequences.

The *Nevada Constitution* requires that all public schools receive adequate funding to fulfill their duty to educate every Nevada student. We know that the economy is strong with this tax. The state of Nevada public schools is not strong. Please pass this bill.

Annette Magnus, Executive Director, Battle Born Progress:

I am here representing the over 20,000 subscribers to our network statewide. We rise in strong support of A.B. 538. This continues a critical revenue stream we have had in place since 2003. This is nothing new. This is a revenue stream that has enjoyed bipartisan support by many still in this body in previous sessions to extend this sunset.

In 2011 the sunset was extended with a bipartisan vote in both chambers with Assembly Bill 561 of the 76th Session. In 2013 the sunset was again extended under Senate Bill 475 of the 77th Session with a bipartisan vote in both chambers. In 2015 this body passed landmark legislation with the commerce tax [Senate Bill 483 of the 78th Session] under Republican control, which was the biggest tax increase in state history, and once again they extended the sunsets on the MBT until 2019 in a bipartisan way.

This legislative body has a long history of moving in a bipartisan fashion to help fund critical services such as our schools, mental health, public safety, and protecting jobs and wages for Nevada families. This would be a permanent solution to the funding crisis we have in this state.

As a native Nevadan, I am tired of hearing the excuses that we never have enough funding for the things we desperately need. This bill allows us to get away from the Band-Aid approach for funding that we always use and move to something more stable. I beg you, stop holding Nevadans hostage. We need a permanent extension to this sunset. Please support A.B. 538.

Lalo Montoya, Political Director, Make the Road Nevada:

We are a member-led and member-funded organization fighting to improve the quality of life of immigrants and the working class. We stand in support of A.B. 538 and we urge this body to work in a bipartisan fashion and continue to invest in the critical services that impact the entire state of Nevada and its citizens in all 17 counties. Please support A.B. 538.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:

I am here in support of A.B. 538. We believe it is vital that our state maintain funding for programs that support vulnerable Nevadans and their families. Continuing the current revenue stream that has consistently had bipartisan support will mean that Nevada will not have to come back again for temporary Band-Aid solutions and simplify the state's financial planning process. We urge you to vote yes.

Marlene Lockard, representing Service Employees International Union Local 1107; and Nevada Women's Lobby:

I am here in support of this bill and urge your support. Since February I have sat in committees throughout this building. I have seen people cry, I have heard stories that just make my heart ache. The number of unmet needs in this state is so acute that not extending this is something that I do not think can or should happen. I think it was just this week I read that Nevada is in the top five states to do business in this country. We have a modest effort to try to help those within our state and we have succeeded in part by not harming businesses with this modest tax.

Carter Bundy, Political Action Representative, AFSCME International, Albuquerque, New Mexico:

We represent state employees. We represent the people who plow roads, and I do not think that season is over yet. We represent people who take care of the mentally ill. We represent people who provide core services and benefits to those in our society who need it the most. Our members are nurses. Our members include correctional officers who take on some of the hardest jobs in this state, in this country, to keep us all safe.

Not passing this bill would effectively be a cut to revenue, which means fewer staff. It means poorer services. It means a more dangerous and less healthy society. One of the first rules of any session is do no harm. We absolutely need this revenue to stay where it is, in order to keep Nevada on the right track. We know there is no such thing as something for nothing, and to keep providing these core services that keep us safe and healthy, we implore you to pass this bill.

Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees:

We stand in support of this legislation for two reasons. We believe the continued collection of this revenue stream will help the state get closer to meeting its obligations, and secondly, to not pass this legislation will ensure that will never happen.

Jared Busker, Associate Director/Government Affairs Manager, Children's Advocacy Alliance:

We are in support of this legislation. We need to continue to ensure that we have a permanent continuation of funding as outlined in A.B. 538. This will help ensure Nevada's children can continue to access state pre-kindergarten programs and numerous other safety net programs that they are currently receiving. The Children's Advocacy Alliance has significant concerns regarding what programs may be cut if this bill does not move forward. Today is not the day to cut programs. We need to continue to pay for programs that support our children and our families. For that reason we urge you to support this bill in a bipartisan fashion.

Brittany Walker, representing The Rogers Foundation; and Con Edison Clean Energy Businesses, Inc.:

I am here on behalf of Rory Reid, executive director of The Rogers Foundation. We support A.B. 538 because it will mean more funding for education by ending the rate adjustment for payroll taxes and continuing an important revenue source to fund schools. I am also here on behalf of Consolidated Edison, Inc. They are the largest developer of solar projects in Nevada. Con Edison has operated successfully under the current tax structure and believes that the impact under A.B. 538 would be negligible and is happy to support this measure.

Chair Neal:

We will now go to Las Vegas to hear those in support of A.B. 538.

Amanda Morgan, Legal Director, Educate Nevada Now:

Educate Nevada Now is a nonpartisan organization focused on ensuring every student in the state has the resources necessary to succeed in our public schools ([Exhibit D](#)). We offer our full support for A.B. 538. We desperately need solutions when it comes to helping fund public education in Nevada. Assembly Bill 538 is one piece of that puzzle, as the revenue generated can permanently support smaller class sizes, services for our students with unique needs, educators and support professionals, and the other essential classroom resources.

We need to begin prioritizing our desperately underfunded public education system. Quality public schools help attract businesses to our state that in turn diversify our economy, and they are critical to developing a qualified workforce. Most important, it ensures a positive future of our state. We need reliable solutions that support our students now, and we thank the sponsors of this bill.

Gariety Pruitt, Political Director, Nevada Conservation League and Education Fund:

I am speaking in support of A.B. 538. Clean air, clean water, a healthy climate, access to nature, along with safe and healthy communities are all part of the thriving Nevada we want to see for all Nevadans. Achieving those things requires investment from everywhere, including our state. We know we are not the only issue and we know that thriving communities require not just clean air, clean water, access to nature, and safe and healthy communities. We know those things also require investment from the state. The Nevada Legislature should send a clear signal that they are willing to stand up and start funding what is important to Nevadans. Passing A.B. 538 starts to send that signal.

Nhi "Courtnei" Vo, Senior Civic Engagement Manager, Asian Community Development Council:

We serve and promote welfare for the Asian and Pacific Islander community. As of last year, we ran a large-scale grassroots organization campaign that knocked on more than 30,000 doors and made over 120,000 calls in our community to identify the top issues, being health care and public education. We want to ensure that the quality of both can be maintained with this funding. I am a product of the Clark County School District (CCSD). In this state, our school class sizes are double the national average. I am also the daughter of a small business owner. Trying to look at the benefits of the two, with businesses being taxed since 2003, the funding that comes from this tax is so important to our families and so important to our community. We need to maintain it and that is why I stand in strong support for A.B. 538.

Maria-Teresa Liebermann, Private Citizen, Las Vegas, Nevada:

I am here today representing myself. I am also a product of the CCSD. Tonight I am remembering the first moment when I realized what was going on in my school. I took buses. I was part of receiving all of the social safety net programs you can think of, along with free lunches. One time during summer break, I remember watching the news and they

were covering the legislative session. They were talking about how they could not figure out how to fund our schools. I remember being a middle school girl watching that and wondering why my free lunch could not be funded, why the school I enjoyed and where I had friends was having trouble with funding. I remember that little girl now, and it makes me wonder if there are kids out there watching you all and wondering why is it so hard to fund our schools. I am still wanting to answer those questions I had when I was twelve years old, and I hope you pass this bill, so hopefully one day kids will not wonder why we cannot fund their schools.

Reverend Mike Willoughby, Private Citizen, Las Vegas, Nevada:

I am here today to ask this body to set aside any pettiness or partisan bickering and to get to doing the work of the good people of the state of Nevada. Maintaining this longstanding revenue stream is critical to keep our state functioning, not just in the next biennium but into the foreseeable future. Please do not let partisan animosity undermine the well-being of some of Nevada's most vulnerable citizens. Discontinuing this funding stream has been passed several times out of this body with bipartisan support. This would mean devastating cuts to Meals on Wheels as well as potentially devastating cuts to neonatal intensive care unit programs in this state. This funding is a cradle-to-grave issue for this state. It is also a moral issue, and I find it to be deeply immoral to play keep-away with the dignity of our elders and of babies literally fighting for their lives by playing games with this funding. So please look into your hearts, do the right thing, and support this legislation going forward into the future. It is doing nothing but good in the community. Please keep up the good work.

Marlene Lockard:

I wanted to make sure my testimony was clear. The article I read was Nevada's Small Businesses No. 2 in Hiring Outlook ["Nevada Small Businesses Rank No. 2 for Hiring Outlook, 15th for Optimism," *Reno Gazette Journal*, June 27, 2018].

Chair Neal:

We will now shift to those opposed to A.B. 538.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Chamber has supported many policy initiatives over the years to increase investment in K-12 education. In 2015 the Las Vegas Metro Chamber of Commerce supported the compromise tax plan that would increase K-12 funding in our state by over \$1 billion in that biennium. The tax plan was based on businesses funding this revenue for education spending. It was not an easy decision for the Metro Chamber because of the wide spectrum of businesses that we represent, but the Metro Chamber's membership felt that investment was important to our state and to our students in K-12 education.

However, as part of the compromise agreement, it was agreed that those businesses that paid both the commerce tax and the MBT would receive a credit toward their MBT liability to the state. It was a very important part of our ability to support the final tax plan in 2015. Since we have members that would be directly impacted by this change in the state's tax policy,

the Metro Chamber does need to voice its concerns. We are in opposition to the bill as proposed today. Thank you for allowing me to share our perspective as a stakeholder from the 2015 tax plan.

Chair Neal:

We need to correct something on the record. It is my understanding that the credit against the MBT is not going away for the commerce tax. Yes, the rate is being made permanent, but that credit that you have currently on the MBT is not going away. You still get to offset that.

Paul Moradkhan:

I meant the rate increase. I apologize for misspeaking.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:

We are strongly opposed to A.B. 538 for two reasons. One, for the impact that the increase in the MBT we are going to see in July under this bill, and two, because the bill lacks a two-thirds requirement in order to see passage.

Just to give you a little update, the Retail Association of Nevada does in fact have a lot of skin in the game when it comes to funding the priorities set forth by this body. In fact, in fiscal year 2018, the retail industry accounted for 22 percent of all commerce tax collections, roughly \$43.8 million. In retail sales, our companies are going to collect and contribute \$2.6 billion to the State General Fund over the next two years, as well as an additional \$3 billion in local school support tax. There are 8,600 retailers in the state of Nevada and 27 different store categories.

I want to share with you that 7,100 of those have 20 or fewer employees, and they account for more than 46,000 jobs. All totaled, Nevada's retail sectors combined employ 272,000 workers, accounting for one in every five employees in the state of Nevada, making the retail industry the largest employment sector in Nevada.

This Legislature has passed a lot of additional bills that directly increase the cost of labor, bills that we have supported as well, but Nevada businesses also anticipated that the MBT would decrease in July, and so a lot of those decisions were made because we expected the Legislature to uphold that promise.

The next biennial budget already accounts for an 11 percent increase in revenue, giving you an additional \$800 million to spend in this biennium over the last biennium. To put that in perspective, this bill represents a very small 1 percent increase in your total revenue but affects a lot of small businesses in a very significant way.

I want to point out that under this bill not one new teacher is going to be hired, not one class size is going to be reduced, and not one new textbook is going to be purchased. In fact, under the recent education plan that found all 80-some-odd revenue streams that go into education, absent was the MBT.

Beyond the fiscal concerns we have for the bill, we do think the bill should be listed as a two-thirds bill. We know that there is an opinion out there, but I think from the *Nevada Constitution's* very claim, it says [in Article 4, Section 18, Subsection 2], ". . . an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates."

We have this LCB [Legislative Counsel Bureau] opinion based not on the courts or *Nevada Constitution*, but instead based on the courts and constitutions of Oregon and Oklahoma, and it would reverse the way Nevada has historically interpreted the two-thirds requirement. For example, could the Legislature . . .

Chair Neal:

You are past your two minutes.

Bryan Wachter:

Would you let me wrap up?

Chair Neal:

Yes.

Bryan Wachter:

We do have questions about how this is going forward. For instance, could the threshold for the commerce tax be decreased to generate hundreds of millions of dollars without a two-thirds vote? Could the definition of insurance be changed to increase the scope of the insurance premium tax without a two-thirds vote? We also want to note that that particular requirement was not self-imposed by the Legislature. It was a demand placed upon the Legislature by the people of the state of Nevada. The power in this building flows from that consent and while it is normally wielded by you folks and our representatives, when the people directly express that power, we think that is something you should respect and continue, and for those reasons we oppose this bill.

Assemblyman Hafen:

The conversation you were having regarding the MBT rate—I was not here in 2015 so I am not fully familiar with it. My businesses are not subject to commerce tax, so I am not familiar with it. I am trying to understand the conversation correctly. In 2015 the MBT rate went up with the promise that if we exceeded our expectations, it would come back down. Is that correct?

Chair Neal:

Yes. So you were seeking clarification on the rate or the credit?

Assemblyman Hafen:

I was just seeking clarification on the testimony and your comments. I want to ensure I correctly understood it.

Chair Neal:

What is very important to understand is in 2015, from the testimony we have heard today, and you can look in the records, the rate was 1.17 percent and then it was increased to 1.475 percent under the prior governor. I know that was a tough sell, and we were in the same financial situation in terms of revenue and in terms of what was needed to get out of this building. You can disagree, Mr. Wachter, but we can check the records and check the budget, or we would not have increased the rate. I understand what is going on and that this rate would be permanent, but we did increase the rate in 2015. It did go up. I understand what is being stated, but I do not want that lost, and I do not think that this Legislature is violating the consent of the people. I also do not think this Legislature is taking the business relationships lightly. I think we understand exactly what this dynamic is, and we respect the businesses that serve this state, and labor, and bring revenue into the state. We totally do. I know I do.

I think we need to be clear in our narrative instead of pitching ourselves against what is being alluded that somehow we are not following the people's will. But we are trying to fund government. We are trying to make it whole and fund health and fund education. I think those things are important. I want to ensure that as we go forward in the testimony, everyone has a free opinion, but not to make us seem like somehow we are violating the *Nevada Constitution* because we had a legal opinion on the two-thirds. What else are we supposed to do but follow the legal opinion? I am not asking for a response, Mr. Wachter, because I do not feel like sparring today.

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

We are in opposition of this bill as a matter of policy. Our opposition stems from our concern for the erosion of the two-thirds rule. Our position is not based on the legal analysis of whether two-thirds is or is not the appropriate standard for canceling a tax decrease. We feel the Legislature should err on the side of caution and use the two-thirds rule anyway. If the two-thirds requirement does not apply to sunsets, then it is not a stretch before it gets weakened to other areas too.

Miranda Hoover, representing Reno Sparks Chamber of Commerce:

The Reno Sparks Chamber of Commerce and its 1,700 members are strongly opposed to A.B. 538 for the simple reason that small businesses cannot be and should not be expected to absorb costs and remain viable in their communities. The passage of the commerce tax in 2015, which we have heard a lot about tonight, was a severe blow to businesses, but businesses since then have been faithfully abiding by those new requirements with the understanding that the Department of Taxation would reassess payroll taxes and potentially

reduce those rates. Removing the potential small tax deduction and reimbursement that businesses can currently receive under NRS 360.203 would be a significant setback to small businesses as a consequence of the 2019 Session. We urge you to resist moving this proposed legislation forward ([Exhibit E](#)).

Chair Neal:

Is there anyone else who would like to testify in opposition to A.B. 538? [There was no one.] Is there anyone who would like to testify as neutral on A.B. 538? [There was no one.] I will close the hearing on A.B. 538 and open the hearing on Assembly Bill 535.

Assembly Bill 535: Revises provisions relating to cigarettes and other tobacco products. (BDR 32-1242)

Melanie Young, Executive Director, Department of Taxation:

The bill before you, Assembly Bill 535, increases and establishes licensing fees for tobacco and other tobacco products. In developing these fees for the licensing rates, the Department of Taxation surveyed 25 other states and looked at the rates for licensing of liquor. As a result, the Department of Taxation has established a rate increase for cigarette wholesale dealers from \$150 to \$650; other tobacco product (OTP) wholesale dealer license, as a new fee, to \$650; cigarette manufacturer's license, which is a new fee, to \$1,000; and cigarette and OTP retail dealers, a new fee of \$50.

As a result of this, the Department of Taxation would receive \$364,900 annually. These rates will also reduce the Department of Taxation's reliance on tobacco settlement income, which funds the enforcement for the Department of Taxation. This request was approved on May 17, 2019, in the Department of Taxation's budget closing in the joint meeting of the Senate Committee on Finance and the Assembly Committee on Ways and Means. I will have Shellie Hughes walk you through the bill.

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

First, I will talk about the conceptual amendment ([Exhibit F](#)). We would like to delete sections 2, 4, 5, and 7 of this bill which contain administrative provisions relating to other tobacco products. The reason for this deletion is these were previously included in Senate Bill 81, which has been enrolled and delivered to the Governor. Also, this would amend provisions in *Nevada Revised Statutes* Chapter 370 relating to the distribution of proceeds from taxes and license fees to require that the license fee proceeds imposed in that chapter will be retained by the Department of Taxation in our budget account rather than being deposited in the State General Fund.

Now I will provide a brief summary of the bill. Section 1 of the bill lays out the licensing fees for cigarette licensees. There are three sections to that. As Ms. Young mentioned, the first is a \$1,000 fee for a cigarette manufacturer's license. The second is an annual license fee of \$650 for wholesale dealers of cigarettes. The third is an annual license fee of \$50 for retail dealers of cigarettes.

Section 3 of the bill lays out the license fees for OTP licensees. Section 3, subsection 1, paragraph (a) is the annual license fee of \$650 for the wholesale dealer of OTP. Section 3, subsection 1, paragraph (b) is the annual license fee of \$50 for a retail dealer of OTP. This section also discusses how a license fee will be calculated if the license is not applied for on January 1. The fees will be a proportionate part of the annual fee for the remainder of the year, but not less than 25 percent of the annual license fee if the license is issued at a time other than January 1. The fees are due payable on January 1 every year, and the license will be canceled automatically if they are not paid by January 15. If the license is canceled for nonpayment, a license can be renewed at any time with a payment of the license fee plus a 5 percent penalty. Section 8 has the effective date of October 1, 2019.

Assemblyman Edwards:

Can you tell me which other states you used and why you chose those states? What made them comparable to Nevada?

Melanie Young:

Going back to the testimony, it was 25 states. We looked at most of the other western states surrounding Nevada and other states throughout the nation, and compared those and structured them in line with what some of the other states had done. This was done in conjunction with assistance we received from the Office of the Attorney General, whom we partner with on our tobacco enforcement.

Assemblyman Edwards:

Can you explain a couple of the criteria for why you would have looked at certain fees from the other states? What makes them the right states to pick from?

Shellie Hughes:

Many of these states have similar provisions to ours and approximately the same number of licensees we do. They were very comparable. Certain states, such as California, had fees a lot higher than what we are proposing. We looked for states that were more in line with Nevada and the population of Nevada.

Assemblywoman Cohen:

I know it is existing language, but I have a question about the automatic cancellation. That seems really harsh—15 days late and you are canceled. What is done to ensure these businesses, especially the small businesses that do not have an office taking care of this, if they make an honest mistake?

Shellie Hughes:

They are put on notice that this is required and all these businesses know. This is a privileged license. We feel it is important that they pay their license fee timely.

Assemblywoman Cohen:

Do you have a percentage of how many people are losing their licenses?

Shellie Hughes:

We do not know at this time, but I can certainly find out that information and get back to you.

Assemblywoman Cohen:

Is it not that many?

Shellie Hughes:

No. It is not that many.

Assemblyman Kramer:

You described these different amounts, the additional charges as license fees. Typically the difference between a fee and a tax is a fee is supposed to cover the cost of doing business and a tax is General Fund revenue. How has the cost of administering the people who are licensed to sell tobacco gone up over three years to justify the more than doubling of the fees?

Melanie Young:

These fees were calculated based on looking at other states. What I want to point out is the tobacco enforcement unit within the Department of Taxation is funded with Master Settlement Agreement (MSA) funds from the tobacco settlement, so we will no longer use those funds, and these funds for the licensing fees would cover the cost of those positions associated with that.

Assemblyman Kramer:

So you are telling me the cost of administering this has not gone up, or it has gone up? It has doubled?

Shellie Hughes:

The cost of enforcement has gone up. Additionally, licensees have come on. Currently, other than the wholesale dealer of cigarettes, there is no fee for licenses. As Ms. Young mentioned, we have been using the MSA funds to pay for the cost of enforcement, and as these licensees increase, more enforcement is needed.

Assemblyman Kramer:

I do not think my question was answered. The fact is, if you have more people with licenses who are paying into it, then there should be more funds to administer the Department. Fees are supposed to be covering the costs of administering it. It is not necessarily going to the General Fund. Then you tell me that you are diverting the payment, instead of MSA funds, you want to use this. That is fine, but the fees should still be representing the cost, if it is a fee. If it is a fee and not a tax, it should still be representing the cost to administer the program. If you have enforcement and they go out and find somebody doing something

wrong, there is a fine that goes on that, and those fines should cover the cost of enforcement. I guess I am questioning why you are significantly jumping up the fees. Represent to me that it actually costs you five times more now than it did before, because you are jumping from \$150 to \$650. It is not a little bit of an increase, it is a significant one, all at once.

Shellie Hughes:

Right now, we do not collect any money from the manufacturer's fee and the retail dealer's license fee.

Assemblyman Kramer:

So there is a manufacturing fee you are going to set at \$1,000. I cannot imagine there being more than 50 manufacturers. You are saying you go to their manufacturing facility and you are now auditing them and we did not do that before.

Shellie Hughes:

Yes, we have done that before, but this gives us the ability to increase our enforcement efforts.

Assemblyman Kramer:

Because there have been deficiencies?

Shellie Hughes:

I am not sure I understand your question.

Assemblyman Kramer:

Because there have been bad players and we have to go find them?

Shellie Hughes:

That is correct. There are some bad players out there.

Assemblyman Kramer:

And we do not fine them when we catch them? There is no penalty for being a bad player?

Shellie Hughes:

Yes, there is a penalty for being a bad player.

Assemblyman Kramer:

But that does not cover the cost?

Shellie Hughes:

We do not always find the bad players because we do not have enough funds to enforce the provisions and hire positions to enforce the provisions.

Chair Neal:

This bill is affecting a decision unit that we voted on, so I wanted to remind you, have you hold on to that, and reflect on it. Are there any additional questions from the Committee? [There were none.] I will now accept testimony from those in support of A.B. 535.

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

Both groups are in support of this bill. For the public health community and the tobacco control community, tax policy is a very important factor in determining consumer behavior. As such, it is very important that the proper tobacco licensing infrastructure be in place in order for these policies to be effective, including the licensing fees that are proposed in A.B. 535. We appreciate the efforts that have been made this session to address this issue of the tobacco licensing world, and the infrastructure and requirements thereof, by means of Senate Bill 81, Senate Bill 263, and, of course, the bill before you today. We thank those who have brought these bills forward and we continue to be strongly in support of these efforts.

Chair Neal:

Is there anyone else in support of A.B. 535? [There was no one.] Is there anyone who wishes to testify in opposition to A.B. 535? [There was no one.] Is there anyone who wishes to testify as neutral on A.B. 535?

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

We were initially in opposition to this bill. We had concerns where the fees were initially being deposited. I believe with the conceptual amendment ([Exhibit F](#)), those concerns have been taken care of. I look forward to working with the sponsor.

Chair Neal:

There are no additional questions from the Committee. There are no closing remarks from the Department of Taxation. I will close the hearing on A.B. 535 and open the work session on Senate Bill 447 (1st Reprint).

Senate Bill 447 (1st Reprint): Exempts sales of certain durable medical equipment, oxygen delivery equipment and mobility enhancing equipment from sales and use taxes. (BDR 32-1255)

Michael Nakamoto, Deputy Fiscal Analyst:

The bill on work session today is Senate Bill 447 (1st Reprint), which was heard in this Committee on May 21, 2019, and was sponsored by the Senate Committee on Revenue and Economic Development ([Exhibit G](#)). Senate Bill 447 (1st Reprint) enacts the exemption from sales and use taxes for certain durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment, that was approved by the voters in the 2016 and 2018 General Elections, and is part of the *Nevada Constitution* as Article 10, Section 3B.

Senate Bill 447 (1st Reprint) defines durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment for the purposes of the exemption, and actually enacts the exemptions for both the statewide 2 percent sales tax rate and the local school support tax rate of 2.6 percent. Those exemptions then carry over into the other state and local sales taxes that are enacted under law.

There are no amendments to the bill. I would be glad to answer any questions.

Chair Neal:

Members, do you have any questions on the work session document? [There were none.] I will entertain a motion to do pass S.B. 447 (R1).

ASSEMBLYWOMAN SPIEGEL MADE A MOTION TO DO PASS
SENATE BILL 447 (1ST REPRINT).

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON
VOTED NO. ASSEMBLYWOMAN BACKUS WAS ABSENT FOR THE
VOTE).

I will assign the floor statement to Assemblyman Hafen. I will close the work session on S.B. 447 (R1). We are going to work session the bills we heard today. I will open the work session on Assembly Bill 535. It is an *Executive Budget* bill—an existing bill that will assist with an already closed-out budget.

**Assembly Bill 535: Revises provisions relating to cigarettes and other tobacco products.
(BDR 32-1242)**

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 535 was heard in this Committee earlier this afternoon. The bill revises the fees that are charged to licensees for certain licenses for cigarettes and other tobacco products. There is a conceptual amendment ([Exhibit F](#)) that the members have a copy of, and it is also available on the Nevada Electronic Legislative Information System.

As was testified to, the proposed amendment would delete sections 2, 4, 5, and 7 of the bill, which contain administrative provisions that were previously included in Senate Bill 81, which has been enrolled and delivered to the Governor. It would also amend various provisions in *Nevada Revised Statutes* Chapter 370, relating to the distribution of proceeds from taxes and license fees, to require that the license fee proceeds imposed in that chapter be retained by the Department of Taxation rather than being deposited in the State General Fund. There are no other changes to the bill. I am glad to answer any questions.

Chair Neal:

Members, do you have any questions on A.B. 535? [There were none.] I will entertain a motion to amend and do pass A.B. 535.

ASSEMBLYMAN FLORES MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 535.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE
MOTION.

Is there any discussion on the motion?

Assemblyman Edwards:

I do not think the Department of Taxation made the case for why we need to increase these fees, especially to the level they are asking. I think it is another hit on the business community and, frankly, the Legislature has been hitting the cigarette and tobacco industry just about every session. I think it is time we give them a bit of a breather, especially since we really cannot justify what we are doing.

Chair Neal:

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

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS, HAFEN, AND
KRAMER VOTED NO. ASSEMBLYWOMAN BACKUS WAS ABSENT
FOR THE VOTE.)

I will assign the floor statement to Assemblywoman Martinez. I will close the work session on A.B. 535 and open the work session for Assembly Bill 538.

Assembly Bill 538: Revises provisions governing certain taxes. (BDR 32-1199)

Michael Nakamoto, Deputy Fiscal Analyst:

Assembly Bill 538 was also heard in this Committee earlier this afternoon. It is sponsored by the Assembly Committee on Ways and Means on behalf of the Office of Finance, Office of the Governor. Assembly Bill 538 would repeal the provisions of *Nevada Revised Statutes* (NRS) 360.203, which relate to the automatic reduction of the modified business tax (MBT) if certain conditions are met with respect to actual collections in an even-numbered fiscal year being above the Economic Forum's forecast for the MBT, the branch bank excise tax, and the commerce tax, as well as the credits for those taxes in that same fiscal year. It would also ensure that the scheduled rate reduction for that, under the provisions of NRS 360.203 which are scheduled to take effect on July 1, 2019, would not occur, and leave the rates for the MBT at 2 percent for financial institutions and mining companies, and 1.475 percent for all other businesses. If there are any questions, I would be glad to answer them.

Chair Neal:

Members, is there any discussion or questions? [There were none.] I will entertain a motion to do pass A.B. 538.

ASSEMBLYWOMAN SPIEGEL MADE A MOTION TO DO PASS
ASSEMBLY BILL 538.

ASSEMBLYMAN FLORES SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Edwards:

Two sessions ago, I opposed the commerce tax, and part of my reason for opposing it is we are going to jigger with it and make it more expensive and harder on the businesses, and here we are two sessions later, and we are already playing with it. It is going to increase costs and all my fears are coming true. I think this will be only the first step toward doing further damage to the business community by playing with it next time and making it harder on them. I cannot support something like this.

Chair Neal:

Are there any additional comments on the motion? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS, HAFEN, AND
KRAMER VOTED NO. ASSEMBLYWOMAN BACKUS WAS ABSENT
FOR THE VOTE.)

I will take the floor statement. I will close the work session on A.B. 538. I will open the hearing for public comment. [There was none.] We are adjourned [at 7:34 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a letter to the Assembly Committee on Taxation submitted by Chris Daly, Deputy Executive Director of Government Relations, Nevada State Education Association, dated May 23, 2019, in support of Assembly Bill 538.

[Exhibit D](#) is written testimony presented by Amanda Morgan, Legal Director, Educate Nevada Now, dated May 23, 2019, in support of Assembly Bill 538.

[Exhibit E](#) is written testimony authored by Ann Silver, Chief Executive Officer, Reno Sparks Chamber of Commerce, submitted by Miranda Hoover, representing Reno Sparks Chamber of Commerce, dated May 23, 2019, in opposition to Assembly Bill 538.

[Exhibit F](#) is a proposed conceptual amendment to Assembly Bill 535, dated May 23, 2019, submitted by Shellie Hughes, Chief Deputy Executive Director, Department of Taxation.

[Exhibit G](#) is the Work Session Document for Senate Bill 447 (1st Reprint), dated May 23, 2019, presented by Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau.