

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

**Eighty-First Session  
April 15, 2021**

The Committee on Revenue was called to order by Chair Lesley E. Cohen at 4:04 p.m. on Thursday, April 15, 2021, Online and in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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/81st2021](http://www.leg.state.nv.us/App/NELIS/REL/81st2021).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Lesley E. Cohen, Chair  
Assemblywoman Teresa Benitez-Thompson, Vice Chair  
Assemblywoman Natha C. Anderson  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Venicia Considine  
Assemblyman Gregory T. Hafen II  
Assemblywoman Heidi Kasama  
Assemblyman C.H. Miller  
Assemblyman David Orentlicher  
Assemblyman Tom Roberts  
Assemblyman Steve Yeager

**COMMITTEE MEMBERS ABSENT:**

Assemblyman P.K. O'Neill (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Russell Guindon, Principal Deputy Fiscal Analyst  
Michael Nakamoto, Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Terri McBride, Committee Manager  
Gina Hall, Committee Secretary  
Cheryl Williams, Committee Assistant



**OTHERS PRESENT:**

Melanie Young, Executive Director, Department of Taxation  
Shellie Hughes, Chief Deputy Director, Department of Taxation  
Terri Upton, Deputy Director, Compliance, Department of Taxation  
Bryan Wachter, Senior Vice President, Retail Association of Nevada  
Jeff Hardcastle, Nevada State Demographer, Office of the State Demographer,  
Department of Taxation  
Jared Luke, Director of Government Affairs, City of North Las Vegas  
Christopher Daly, representing Nevada State Education Association

**Chair Cohen:**

[Roll was taken and Committee rules and protocol were reviewed.] We will begin today with Senate Bill 25, which revises provisions governing the determination of whether food for human consumption is subject to sales and use taxes. With us today is Director Melanie Young from the Department of Taxation. Welcome, Director Young. Feel free to begin and introduce your staff who will be providing testimony with you.

**Senate Bill 25: Revises provisions governing the determination of whether food for human consumption is subject to sales and use taxes. (BDR 32-282)**

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

With me today is Chief Deputy Director Shellie Hughes and Deputy Director Terri Upton. We are here to present Senate Bill 25, which revises the provisions governing the determination of whether food for human consumption is subject to sales and use taxes. The Department of Taxation (Department) is requesting to repeal language in statute that is no longer relevant since the Department joined on with streamlined sales tax. At this time I will turn it over to Deputy Director Hughes. She has a presentation and will go through the provisions of the bill.

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

Senate Bill 25 repeals *Nevada Revised Statutes* (NRS) 372.2841 and NRS 374.2891 [page 1, [Exhibit C](#)]. Currently NRS 360B.110 requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement (SSUTA) (Agreement) and to take any other actions reasonably required to implement the provisions of the Agreement and adopt necessary regulations [page 2]. Additionally, NRS 372.284 and the identical provision found in NRS 374.289 exempt food for human consumption from sales and use tax; however, excluded from this exemption is prepared food intended for immediate consumption. In other words, prepared food intended for immediate consumption is subject to sales and use tax. Lastly, NRS 360B.460 defines prepared food and is consistent with the definition in the SSUTA. The Department has also adopted *Nevada Administrative Code* (NAC) 372.605, consistent with the SSUTA, that provides guidance on how to determine when food is considered "prepared food" and thus subject to tax.

This bill repeals NRS 372.2841 and the identical provision in NRS 374.2891, and thereby eliminates the language that directs the Department not to look at the type of establishment where the food is sold when determining the taxability of the food sold [page 3, [Exhibit C](#)]. *Nevada Revised Statutes* 372.284 and NRS 374.289 would remain in place to provide that prepared food for immediate consumption is taxable. And NRS 360B.460 will remain in place to provide the definition of prepared food and continue to provide guidance as to what food is subject to tax. This bill becomes effective upon passage and approval.

To provide some background, Nevada became a full member to the governing board of the SSUTA on April 1, 2008 [page 4]. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. This includes having uniformity and consistency in sales and use tax laws among the states. There are 23 states that are full-member states and have adopted the measures in the Agreement. Sales and use tax provisions relating to the taxability of food are set forth in the SSUTA. Nevada follows these provisions and, as mentioned previously, they are included in NRS 372.284, NRS 374.289 and NRS 360B.460. The Department has also adopted regulation NAC 372.605 based on the Streamlined Governing Board issue papers and interpretations. The Department's most recently adopted regulation, LCB File No. R056-18, is based on Streamlined's interpretation number 2006-04 dated April 18, 2006.

The Department would like to repeal NRS 372.2841 and NRS 374.2891 because these statutes predate our adoption of the SSUTA and no longer are applicable in our determination as to whether food is intended for immediate consumption because we now follow provisions that are found in the Agreement [page 5]. Consequently, these statutes are no longer relevant. Furthermore, no other Streamlined member state has statutes with language found in NRS 372.2841 and NRS 374.2891.

In addition to these statutes being no longer applicable, leaving those statutes in the NRS leads to confusion in the industry because we cannot provide guidance on our website, in our publications, or in our industry trainings to specific establishments as to when that establishment's food sales are taxable [page 6]. *Nevada Revised Statutes* 372.2841 and NRS 374.2891 prevent us from referring to the type of establishment when discussing what type of food is taxable. We have researched other states, both members and nonmembers of Streamlined, that provide guidance by establishment as to when food is subject to tax:

- Arkansas has a food guide and lists examples of common food items purchased at your local grocery store that are subject to the state sales and use tax. Additionally, this guide provides examples of when sales tax applies to common food transactions at grocery stores, convenience stores, concession stands, and fast food restaurants.
- Indiana has a sales tax information bulletin that indicates a number of items sold by grocery stores, supermarkets, and similar type businesses that are classified as nontaxable food items and taxable food items.

- Maine, while not a member state, has a publication that includes a "Quick Answer Chart" that lists the type of retailer and what items the retailer sells that are subject to tax.
- Washington has a publication for restaurants and bars that indicates which food sales are generally subject to tax.
- Wisconsin provides sales and use tax training for grocers, which includes determining which foods sold at grocery stores are taxable as prepared food for immediate consumption.

If NRS 372.2841 and NRS 374.2891 are repealed, the Department can provide clarity to establishments on which of the establishment's food sales are taxable. Pursuant to NRS 372.284, NRS 374.289, and NRS 360B.460, we would determine when food is prepared food for immediate consumption and therefore taxable, and then replicate other Streamlined member states' guidance and training, making Nevada consistent with how other states operate.

*Nevada Revised Statutes* 372.2841 and NRS 374.2891 were added to the NRS in 1999 with Senate Bill 238 of the 70th Session and Nevada was not a member of the governing board of the SSUTA [page 7]. At that time there was an issue on determining when food was subject to tax. For example, restaurants served food for immediate consumption, so restaurants were being taxed on their sales of food; however, grocery stores were not being taxed on their sales of food because foods purchased from grocery stores were taken home to prepare and serve at a later time.

In the minutes of the Assembly Committee on Taxation dated April 20, 1999, and the Senate Committee on Taxation dated February 25, 1999, testimony was provided by a pizza parlor owner [Gary Murray] who sold frozen pizzas. The owner came forth to testify that he could not compete with grocery stores because his food sales of frozen pizzas were being taxed where grocery stores sales of frozen pizzas were not. The Legislature recognized the unfairness in the tax application, and as a result, the statute was put in place that required the Department not to look at the type of establishment to determine the taxability of food but to look to whether the food is intended for immediate consumption [Senate Bill 238 of the 70th Session].

As mentioned previously, since the enactment of NRS 372.2841 and NRS 374.2891, Nevada has joined the Streamlined Sales and Use Tax Governing Board as a member state. Furthermore, the Legislature has enacted NRS 360B.460, which defines what is prepared food. This statute contains the requirements as to when food is considered "prepared food" and thus subject to tax pursuant to NRS 372.284 and NRS 374.289. As a result, NRS 372.2841 and NRS 374.2891 are no longer needed.

In summary, we request that both NRS 372.2841 and NRS 374.2891 be repealed because these statutes predate Nevada's adoption of the SSUTA, which requires the Department to base the taxability of food on whether the food is intended for immediate consumption and not on the type of establishment where the food is sold [page 8]. Thank you for your consideration, and with that, I will turn it back over to Director Young.

**Melanie Young:**

This concludes our presentation, and we are available for questions.

**Chair Cohen:**

If the change is made, will there be any look back on businesses and having to redo taxes—anything like that, or would it be just moving forward even though we are clarifying what we are pretty much doing already?

**Melanie Young:**

The Department is already operating under the provisions of the SSUTA, so this would not change whether we would look back on taxes or taxpayers who have been complying with the bill. To clarify, I believe they would still be expected to be in compliance with the Agreement as it is today.

**Assemblyman Roberts:**

I need some clarification. In 2008 is when NRS 360B.110 was amended to require we get into this tax agreement, so if that were ever repealed, would we have to reinstitute NRS 372.2841 and NRS 374.2891 since it would not be clarified in the Agreement?

**Melanie Young:**

I would like to turn this question over to Deputy Director Hughes.

**Shellie Hughes:**

If we did repeal NRS 360B.460 and were no longer part of the SSUTA, NRS 372.284 and the identical provision found in NRS 374.289 would still be in place. It still provides that food for human consumption does not include alcoholic beverages, pet foods, tonics, and vitamins, but it does exclude prepared food intended for immediate consumption. So the tax would still be in place for prepared food intended for immediate consumption.

**Assemblyman Roberts:**

Maybe I just did not catch it because this has too many numbers in it. My point is, is if we repeal these sections because we have the Agreement and we ever repeal the Agreement, would we have to put these back into statute? I guess the answer is no.

**Shellie Hughes:**

Yes, the answer is no. The provisions we are repealing indicate we could not look at the type of establishment where the food is sold to determine whether food is for immediate consumption.

**Assemblywoman Bilbray-Axelrod:**

I was curious how this might impact—and maybe it does not—meal prep services. I know there used to be a company in my district, and I do not know if they are still in existence, called Dream Dinners. You would go in and create your meal but then take it. I know there are several subscription-type meal delivery services. Are those impacted at all?

**Melanie Young:**

I would like to turn that question over to Terri Upton. She is our Deputy Director over Compliance.

**Terri Upton, Deputy Director, Compliance, Department of Taxation:**

Anything that is prepared by the vendor for immediate consumption would be taxable. If something were prepared by the vendor for the customer to take home and prepare in their home, that would be exempt.

**Assemblywoman Bilbray-Axelrod:**

I am talking about an actual business, a business design, where you might go in and create your own meal, but then I guess you would take it home. I do not know if you are familiar with a lot of these home deliveries, but the food is already prepared. I guess maybe you would have to heat it up. I am not sure. I am just trying to understand where that falls. Am I making sense?

**Terri Upton:**

Yes. If a business were to simply package the food and not heat it, that food would be exempt because part of the statute says it has to be in a heated state, two or more ingredients, and sold with utensils [NRS 360B.460]. That would not be the case for one of these home delivery-type services. That food would be exempt because it is sent to the home where the customer prepares it for immediate consumption. Any food that was sold in a heated state, such as in a grocery where you would go in and they have hot food such as pizza, sandwiches, and soup—that would be taxable. If you go into the grocery store, put the soup in a container, take it to the cashier, and pay for it there—that would be taxable.

**Assemblywoman Kasama:**

Along that line, let us say you are in a grocery store and there are premade packages such as meatloaf and mashed potatoes. It is all done and you just buy the box and take it home. It has not been heated. Is that taxable?

**Terri Upton:**

No. Food purchased in a grocery store is not taxable unless it is sold in a heated state or it has been prepared, such as in the deli.

**Assemblywoman Kasama:**

There is a section on the utensils, so that is completely removed, whether utensils are provided or not?

**Terri Upton:**

No. That is not removed. That remains the same within the statute. That is part of the Streamlined Sales Tax (SSUTA).

**Assemblywoman Kasama:**

I noticed when I read this it has a lot of definitions, but it did not have chopsticks. So if you picked up sushi that has been prepared and they gave you chopsticks, as long as you do not take the chopsticks, it is not taxable?

**Terri Upton:**

Sushi would be taxable because it is prepared. It is sold in some kind of container. It is meant for immediate consumption. It is generally sold with napkins in a container. That would be considered taxable.

**Assemblywoman Kasama:**

It is not heated, so I am just wondering about the definition.

**Terri Upton:**

The statute is food sold in a heated state by the seller and two or more ingredients mixed together [NRS 360B.460]. It does not necessarily always have to be heated. It can just be two or more ingredients, such as a sandwich, put together and sold.

**Assemblywoman Benitez-Thompson:**

Serving on the Legislative Commission, I recall the conversations when we were talking about the regulation. I appreciate Assemblywoman Kasama asking about sushi as I remember that was one of the examples we talked about. We were trying to wrap our heads around cold and chopsticks versus hot, and making that distinction when you are in a grocery store, what you get from the deli, and if it is hot and prepared, comes with utensils, versus turning around to the rack behind you and grabbing something cold that is prepared but not heated there, but intended to be heated at home. So much of these conversations are coming back to me.

If you could remind me, there is a provision in here, or it might be coming from the regulation, where we talk about the items containing four or more servings and those are not taxed. So when we say four or more servings, as an example if you go to Costco and in their deli area you might have meals prepared but they are intended for large servings, you are not just getting an individual serving, but servings for four or more, which standard prevails? Does the four or more automatically exclude them, or because you have something hot and with utensils, it stays in?

**Terri Upton:**

The statute does not provide a bright line such as four or more. Each case is looked at individually and what is the intent of the consumption of that food. Is it a whole pizza? Could someone actually sit down and eat that whole pizza? Is it sold in a box where they take it out? Of course that would be a heated state. But if you look at other pizzas that are

sold, where you take them home and cook them at home, those would not be taxable. So it is what the intent is because there are so many situations on how food is sold and how many servings there could be.

**Assemblywoman Benitez-Thompson:**

I believe the regulation gave 90 days for a business to come into compliance with this new methodology versus the old methodology, and I think by this point we are past the 90 days. Do we have established practices where right now someone would know where tax is applicable and where it is not, or are we coming up with hypotheticals that are already being addressed and the retailer knows what is applicable or not just by the practice of doing it for at least one or two quarters?

**Terri Upton:**

These are established practices. Retailers know by now what is taxable and what is not. The Department has had numerous classes available through Ask the Advisor. I hope that answers your questions, and maybe Deputy Director Hughes could step in to add further clarification.

**Shellie Hughes:**

I believe the taxpayers are familiar with our regulations now. I think the issue you were talking about, with the regulation and the prepackaged food, had to do with that very thing—it is prepackaged food. It would be four or more servings in a prepackaged container so it is already packaged together. It is not buying four separate items in one item that is prepackaged all together. That is where the exclusion comes for the regulation.

**Chair Cohen:**

To add to our list of foods, I have a message from Mr. Guindon, our Principal Deputy Fiscal Analyst with the Fiscal Analysis Division, Legislative Counsel Bureau (LCB), who said it is not just about heating, as you get salad or gazpacho at a restaurant that is cold but still prepared food for immediate consumption, so taxable. Additionally I would like to direct members to Article 10, section 3, paragraph (a) of the *Nevada Constitution* that has the food exempt from taxes on retail sales and the exceptions there.

**Assemblyman Yeager:**

I find this topic quite fascinating. I understand what you are trying to do in the bill. My question is a little bit of a follow-up of a couple of the questions asked by my colleagues. As Assemblywoman Kasama and Assemblywoman Benitez-Thompson mentioned, some of these issues seem a little confusing. You can blow that line when you have a retailer who may be serving food to be consumed right there but then has a take-out option for heating up your food later. I think about California Pizza Kitchen, where you could eat your food there but you could add additional food to take home and heat up later. So my question is if the taxpayers are confused about how they apply this and what they are supposed to do, since they are the ones who have to collect the tax on-site, what options are there for them to get that education, reach out to you to get some clarity, when we have these tricky situations where they are serving food on premises but then also allowing people to take food out?



**Terri Upton:**

They have several opportunities to reach out to the Department. We have a call center available to answer their questions. They can also write in to the Department and receive an advisory that is in writing. We have Ask the Advisor classes they can attend and we will give them that information. I believe we have a technical bulletin on this subject that is out there on our website, and some frequently asked questions. There are a lot of opportunities provided to taxpayers if they have questions on the subject.

**Chair Cohen:**

Our fiscal analysts are available to answer any other questions you may come up with later, and I am sure we can also reach out to Director Young and her staff to ask questions should any more come up. Director Young, do you have anyone else you would like to speak as part of your presentation?

**Melanie Young:**

No. There is no one else we would like to have speak. What I would like to clarify here is the goal from repealing this provision is the Department can provide additional guidance because right now the law prevents us by identifying the establishment whether they are to collect the tax or not. Our goal is to be able to expand the guidance provided in this area so that there is clear information out to the taxpayers.

**Chair Cohen:**

We are going to go to those in support. Do we have anyone on the Zoom call in support? [There was no one.] We will now go to the phones for those in support.

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

We want to thank Director Young and her staff for being so diligent in keeping Nevada in compliance with the SSUTA. We are very proud that Nevada is a governing member, and, as this conversation and hearing have brought up, it is very confusing and complex on what is and is not taxable. The SSUTA provides us with clarity so that our members and our retailers know what is and is not required. As hard as it might be, I believe S.B. 25 provides some clarity specifically on this issue, and we look forward to keeping our taxpayers in compliance and keeping those compliance costs down and low for the state of Nevada. We urge your support on S.B. 25.

**Chair Cohen:**

I appreciate Director Young saying there are bulletins and her staff is available to provide information. Are your members able to get that information, not just from the Department but also from the work you do and possibly other changes, and not just when they know they need to make a change? Are they given that information—the change they need to make?

**Bryan Wachter:**

I believe working with our partners, the retail association, the chambers, as well as the Department, we are able to get that message out. This is something our members pay a lot of attention to. We were involved during the regulatory process, so it is something we are

constantly analyzing and making sure our members are in compliance. As you know, the State of Nevada does not have traditional tax collectors. The retailers fill that role, so it is something they take seriously and they want to stay in compliance. I would say it is an active partnership between our retailers and the state to ensure everyone knows what their job is and how to stay in compliance.

**Chair Cohen:**

We will hear from the next person in support. [There was no one.] We will now hear testimony in opposition. There is no one on the Zoom call, so we will go to the phones for those in opposition. [There was no one.] I do not believe we have anyone on the Zoom call for testimony in neutral. We will now go to the phones. [There was no one.] With that, Director Young, do you or your staff have any closing remarks?

**Melanie Young:**

Thank you for your time in hearing S.B. 25 so the Department can provide additional guidance to our taxpayers in Nevada and hopefully provide clarity at the lowest level of compliance. We appreciate your time today.

**Chair Cohen:**

I will close the hearing on S.B. 25 and open the hearing on Senate Bill 74, which revises provisions relating to the population total used in determining the distribution of certain taxes. Director Young, you may begin when you are ready.

**Senate Bill 74: Revises provisions relating to the population total used in determining the distribution of certain taxes. (BDR 32-281)**

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

I am here today with members of my team, again, Chief Deputy Director Shellie Hughes; Jeff Hardcastle, our State Demographer; and Kevin Williams, our Management Analyst who is responsible for our tax distributions. We are here to present Senate Bill 74, which revises the provisions where population will be used for certain tax distributions. This is a housekeeping bill that cleans up language that aligns with how the Department of Taxation (Department) is processing tax distributions.

Over the past two years, the executive team has been working on reviewing our processes. This review is in large part so we can become more efficient and modernize the Department in anticipation of our IT [Information Technology] modernization project. With that being said, a while back we asked our internal auditor to audit some of our processes. During this audit, it was discovered that the Department was not following the law. This bill removes the language enacted in 1999 for utilizing the Census Bureau's [Bureau of the Census of the United States Department of Commerce] population numbers as the Department has not used those population numbers in the state tax revenue distribution process. We have always

used the State Demographer's (Demographer) population numbers that are certified by the Governor, and there are many reasons for this. At this time I would like to turn the time over to Deputy Director Hughes, who will go through the provisions of the bill and explain the circumstances around this request.

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

Senate Bill 74 clarifies the population totals certified by the Governor annually are to be used in determining the allocation and deposit of proceeds of the basic city-county relief tax (BCCRT) and revises provisions governing the population totals used in determining the distribution of certain taxes [page 1, [Exhibit D](#)]. The requested changes are to statutes that govern the distribution of state taxes, and the changes do not have any impact on how the population totals are arrived at nor do the changes impact the local government's petition and appeal rights of the population totals.

Existing law requires that population totals be used for the distribution of certain taxes [page 2]. In several provisions of the *Nevada Revised Statutes* (NRS), such as NRS 360.690 and NRS 377.057, the population totals to be used are the population totals certified by the Governor, unless those totals conflict with the Bureau of the Census (Census) totals. In the case of conflict, the Census totals must be used. *Nevada Revised Statutes* 360.285, subsection 2 provides that the Department must use the population totals certified by the Governor for any tax that is collected for apportionment in whole or in part to any political subdivision where the basis of the apportionment is the population of the political subdivision.

Walking through the bill, section 1 amends NRS 360.690 subsection 8 and for certain taxes eliminates the requirement to use the population totals of the Census in case of conflict with the population totals of the Governor [page 3]. Section 2 amends NRS 377.055 and clarifies that the population totals used to make these determinations are the population totals certified by the Governor annually. Section 3 amends NRS 377.057 and eliminates the requirement to use the population totals of the Census in the case of conflict with the population totals of the Governor. Section 4 provides that the bill is effective upon passage and approval.

The Department, through the Demographer, annually determines the population of each town—which includes each unincorporated town—as well as each township, city, and county [page 4]. Once the Demographer has determined the population, it is submitted to the Governor, who certifies the population totals on or before March 1 of each year as required by NRS 360.285. The Department uses the Governor's certified population totals every year to determine the calculation of distributions for the BCCRT, the supplemental city-county relief tax (SCCRT), and to local governments for money remaining after base monthly allocations. Since the Census totals have never been used since the enactment of this language in the 1990s, the Department finds this bill to be a housekeeping matter.

We discovered that we were not using the Census totals after our internal auditor performed an internal audit of our distributions [page 5]. However, we thought we were properly calculating these distributions because a similar provision in NRS 360.285, subsection 2

provides that the Department must use the population totals certified by the Governor for any tax that is collected for apportionment in whole or in part to any political subdivision where the basis of the apportionment is the population of the political subdivision.

There are several problems with using Census decennial totals and annual Census estimates, most notably timing [page 6, [Exhibit D](#)]. The Governor's certified population totals for the current year are based on population totals from two fiscal years prior. If we were to use Census decennial totals and annual Census estimates, these are based off the current year. Would we use Census totals two fiscal years behind to correlate with the Governor's certified totals? Additionally, the Governor's certified totals are released March 1 for counties, incorporated cities, and unincorporated towns. Census annual estimates for counties are released in March and incorporated city estimates are released in May. And the Census does not produce decennial totals or annual Census estimates for unincorporated towns. Furthermore, Census totals are continually updated, so it causes problems on which date those totals should be retrieved.

Another problem is the mandatory language in NRS 360.285, which requires the Department to use the Governor's certified population totals for any tax that is collected for apportionment where the basis of the apportionment is the population. While the Census language in NRS 360.690 and NRS 377.057 deals with calculating population change, it is inconsistent with the language in NRS 360.285. It is not clear why we would use the Governor's certified population for apportionment purposes, then use Census population totals to calculate the population change over a five-year period.

Next, the language is unclear when Census totals should be used to determine if there is a conflict between Census totals and the Governor's certified totals. Is it every year and we use annual Census estimates instead of the Governor's certified totals, or is it every 10 years and we use decennial totals and then use Governor's certified totals in off years? Then the problem becomes if it is determined that decennial Census totals and annual Census estimates are to be used every year, determining whether there is a conflict. In reality, the decennial Census totals and the annual Census estimates will always be in conflict with the Governor's certified totals. Thus, according to NRS 360.690 and NRS 377.057, the decennial Census totals and annual Census estimates should always be used. Decennial totals would be used every 10 years and annual Census estimates would be used in off years.

The problem with using annual Census estimates is annual Census estimates do not include estimated populations of unincorporated towns, so the Governor's certified totals would have to be used for those population totals. Again, this causes a problem because the Governor's certified totals are calculated based on the population for the two fiscal years prior and Census totals are calculated for the current year. And again, we will have to determine if the statute requires that we use Census totals two fiscal years behind to correlate with the Governor's certified totals. Alternating between the Census totals and Governor's certified totals in the calculation of the distributions becomes a difficult task. We would not have consistent statistical algorithms year to year.

And finally, if Census totals are only to be used in decennial years, then the Governor's certified totals could be used in the off years, but then we encounter two problems: inconsistencies from moving from the decennial Census totals to the Governor's certified totals, and a timing difference regarding the decennial Census totals based on the current year and the Governor's certified totals being two fiscal years behind. Again, we will have to determine if the statute requires that we use Census totals two fiscal years behind to correlate with the Governor's certified totals. Additionally, the Census continually updates the Census Bureau totals so these totals can change and we would have to continually update the population totals when calculating the distribution.

I want to provide you with some legislative history of the current law:

- Assembly Bill 796 of the 55th Session [1969], codified as NRS 360.285, was enacted to require where any tax collected for apportionment, the population would be determined by the last preceding national census. Transition from one such census to the next was required on July 1 of the year following the year in which the census was taken. Every payment prior to such date shall be based upon the earlier census and every payment after such date shall be based upon the later census.
- Assembly Bill 322 of the 62nd Session [1983] revised the language of NRS 360.285 to require where any tax collected for apportionment the population would be determined by the Governor's certified population instead of the Census totals.
- Senate Bill 494 of the 64th Session [1987] allowed for the appeal of population determinations prior to being certified by the Governor and allowed the Department to hire a demographer.
- Assembly Bill 82 of the 66th Session [1991] changed the certification date to the current date of March 1.
- Assembly Bill 369 of the 61st Session [1981], codified as NRS 377.057, was enacted as part of a comprehensive tax reform package sought to limit taxes on real property and increase sales tax. As originally enacted in Chapter 377 of NRS, the statute required the Governor to certify the population of each county annually. The statute did not contain any reference to the census.
- Senate Bill 506 of the 67th Session [1993] added language to NRS 377.057 requiring that the Census totals be used if the Census totals were in conflict with the totals certified by the Governor. The bill was enacted to correct errors made in another Assembly bill from the prior session. In an amendment to the bill, the Census language was added. There is no discussion of the use of Census totals in the legislative history nor was there any discussion of any issues arising from the use of population figures certified by the Governor. Thus, it is unclear why this change was made.
- Senate Bill 254 of the 69th Session [1997], codified as NRS 360.690, added language to require Census totals to be used if in conflict with the Governor's certified totals. The legislative history contains no discussion as to why.
- Senate Bill 538 of the 70th Session [1999] revised NRS 360.690 and clarified when Census totals were to be used.

In the Senate Committee on Taxation minutes from April 6, 1999, for Senate Bill 538 of the 70th Session, Teresa Glazner from the Department of Taxation said that the Governor's certified totals were used until the Census totals were released, then the formula would be reestablished based on the Census totals.

In the Senate Committee on Taxation minutes from April 8, 1999, for Senate Bill 538 of the 70th Session, there was a discussion about when Census totals should be used. There was a discussion that using estimates may be unconstitutional. The Chair of the Committee clarified that when Census figures were current, they were used; in off years, the Demographer would provide totals which were certified by the Governor.

The legislative history for NRS 360.690 appears to suggest the legislative intent was to use decennial totals every ten years and then Governor's certified totals in off years [page 8, [Exhibit D](#)]. With no discussion in the legislative history for NRS 377.057, can we assume that the legislative intent was to also use the decennial Census totals every ten years and then Governor's certified totals in off years?

With S.B. 74 we would like to remove the language that indicates the Census population totals will be used when they are in conflict with the Governor's certified population totals [page 9]. This language occurs both in NRS 377.057 and in NRS 360.690. There are several reasons why we believe there will not be a negative impact if this language is removed:

1. During our research, we could not find where the Department has ever used the Census totals. Based on the legislative history for NRS 360.690, we believe the Census totals should have been used in 2000, 2010, and now in 2020. However, this issue was brought to our attention by our internal auditor and not an outside party that was affected by our use of the Governor's certified totals.
2. The legislative history of NRS 360.690 suggests the Census language was added to reach more accurate population totals. However, there is not any reference to why the language was added to NRS 377.057. With the addition of the Demographer to the Department in 1987, and the ability for local governments to appeal the population totals before they are certified by the Governor pursuant to NRS 360.283 subsection 3 and *Nevada Administrative Code* (NAC) 360.390, these actions ensure more accurate totals will be reached.

Based on these reasons, we cannot determine any negative impact if the Census language is removed in both statutes. In fact, we determined that there would be a positive impact if we removed the language [page 10]:

- The change would harmonize NRS 377.057 and NRS 360.690 with other tax statutes such as NRS 360.285.
- No other allocation provisions in Chapter 377 of NRS or Chapter 360 of NRS reference using Census totals.

- Removing the language would assist in carrying out the original intent of NRS 377.057 as shown by the statute's legislative history.
- Removing the language would allow for timely, consistent, and clear distributions.

In summary, we are requesting to remove the language present in both NRS 377.057 and NRS 360.690 that indicates the Census population totals will be used when they are in conflict with the Governor's certified population totals [page 11, [Exhibit D](#)]. And we request that the language in NRS 377.055 clarify that only the Governor's certified population totals will be used. I think it is important to emphasize again that the requested changes are to statutes that govern the distribution of state taxes, and the changes do not have any impact on how the population totals are arrived at, nor do the changes impact the local government's petition and appeal rights of the population totals.

We can stop here for questions on S.B. 74, or if the Chair wishes, we could give a high-level overview of the consolidated tax distribution (CTX), which is a minor element at issue here but may help explain why the proposed revisions in S.B. 74 are necessary.

**Chair Cohen:**

We will have Mr. Guindon, our Principal Deputy Fiscal Analyst with the Fiscal Analysis Division, Legislative Counsel Bureau (LCB), go through the charts that have been provided to Committee members and are also online for the public to see as exhibits. He has planned something and that will help give us some information about CTX and put things in perspective for us.

**Russell Guindon, Principal Deputy Fiscal Analyst:**

As your nonpartisan legislative staff, we neither support nor oppose legislation. I am here to present information as your staff, working with the Department of Taxation's staff, in terms of working the issue that was in S.B. 74 and ensuring we understood, trying to figure out the language and some of the points Deputy Director Hughes is making.

I have a set of five tables [[Exhibit E](#), [Exhibit F](#), [Exhibit G](#), [Exhibit H](#), and [Exhibit I](#)] that were prepared by your Fiscal staff, working with information we were getting from the Department of Taxation (Department), and working with the Department on putting the tables together. I will bring up the first table [[Exhibit E](#)]. Hopefully you have these available to you. I have tried to color code them to make it a little easier to present.

Going through these tables for the Committee members' benefit is to provide the context in the numerical world of the data and the points Deputy Director Hughes was making in her presentation about some of the issues involved in this language that is in law. Under an assumption of how it would be administered, as Deputy Director Hughes pointed out, there is some potential ambiguity about how it would be administered had the Department administered it.



The first table has the light blue banner across the top and is labeled Table 1 [[Exhibit E](#)]. This is going under the assumption that when the Department is doing these statutory calculations every year, they are supposed to see if there is a conflict between the State Demographer's (Demographer) estimates and the Bureau of the Census (Census) estimates, what those numbers could look like for the two years that are displayed here, and what the potential implications could be for that.

In Table 1A, the top block of the table, on the left-hand side with the orange shading, those are the Demographer's estimates for July 1, 2015, and July 1, 2016. These are the Governor's certified estimates that you heard Deputy Director Hughes reference, which I believe in early March the Governor is required to certify for the preceding July 1 period. Two fiscal years would be used to calculate the growth rate, and that would be used to do the SCCRT required calculations in Chapter 377 of NRS for the guaranteed counties, what you see highlighted in green rows. Under the distribution, your guaranteed counties are exactly that. When the SCCRT was put in place, under this guaranteed and non-guaranteed structure, the guaranteed counties have an amount that is distributed to them, one-twelfth every month, and that amount is guaranteed. It is then adjusted every year based on the statutory formulas—you take last year's amount and adjust it for the growth in the population in the CPI [consumer price index], or the growth in prior years' SCCRT distributions, whichever is less.

In Table 1A you see the Demographer's estimates shaded in the orange block, and to the right, you see the Census estimates shaded in yellow for that July 1, 2015, and July 1, 2016 period. So these show the same two periods.

To give you some perspective, I will use Clark County, which is the third row, and then use Douglas County, which is the fourth row and a guaranteed county. Looking at the Demographer's estimates and then the Census estimates, the Demographer's estimates for these two local governments are higher than the Census estimates. As has been discussed here, that is the conflict. The estimates are not the same and rarely would they be. I think it would be unreasonable to think the Census doing their thing and the Demographer doing his thing are going to come up with the exact same estimates for all these entities for each year. So if that is the conflict, the law would require the Department to use the Census estimates under the scenario we are assuming. Every year when there is this conflict, they have to use their estimates. What you are doing then is using those Census estimates to calculate the growth rate because it is not the levels, it is the growth rate that is being used to determine the guaranteed calculation in Chapter 377 of NRS for the guaranteed portion for those guaranteed counties.

Looking at this table [[Exhibit E](#)], even though Clark County has higher estimates for population for the Demographer than the Census, the growth rate is higher under the Demographer's estimates—2.26 percent versus 2.01 percent. When you look at Douglas County, the population estimates by the Demographer are higher than the Census estimates, but the Census estimate growth rate is higher—0.91 percent versus 0.02 percent.



You can now start to see some of the elements Deputy Director Hughes was talking about. If the conflict is that the estimates are different, then you have to use those to calculate the growth rates, and you are going to get different results by using the Census versus the Demographer's estimates. There is a statutory provision for the Demographer to prepare the estimate and there is a regulatory process for preparing those estimates to be used, but this piece of law would say you are supposed to use the Census because there is a conflict. Looking at the far right-hand column, the green rows would be the changes where it could be a positive or negative change using the Census estimates, in terms of the difference in the growth rates—using the Census estimates versus the Demographer's estimates. That is going through for the 2018 fiscal year (FY) calculation.

Table 1B [[Exhibit E](#)], which is below Table 1A, is showing you the results that would have been in place for FY 2019, the population estimates for July 1, 2016, and July 1, 2017. In the right-hand column, you especially see the differences with regard to whether the growth rate coming out of the Census estimates would be higher than the growth rate coming out of the Demographer's estimates, and that is going to have a potential impact on the guaranteed calculations for those guaranteed counties.

That is what I wanted to show in this table, to provide visual context to the points Deputy Director Hughes was making about these estimates and if the estimates are different, and what could potentially happen with regard to the Department being required to use the Census estimates to do the calculations for the SCCRT distributions in Chapter 377 of NRS.

I will now bring up Table 2 [[Exhibit F](#)] and show you how this is tied to the SCCRT as one of the revenues distributed at the first tier of the CTX, along with the five other revenue sources. I thought I would provide a little more information on this in tabular form to complement the information the Department provided in their PowerPoint [[Exhibit D](#)] and the information your Fiscal staff provided in the bill explanation.

We have provided the six revenue sources that go into the first tier. The first tier is a distribution requirement for these six taxes to be distributed at the county level to the counties. The basic city-county relief tax (BCCRT) is the 0.5 percent tax rate that has come up in discussions from time to time. If it is an in-state—meaning that the sale occurred in that county—the distribution formula requires that those revenues be sourced to the county. If they are out-of-state sales—meaning it is a business not maintaining a fixed place of business in the state—they are distributed to the counties on a per-capita basis. Next is the SCCRT, but I will leave that for last. The cigarette tax is the \$.10 portion of the cigarette tax rate distributed to the counties on a per-capita basis. The liquor tax is the \$.50 tax on hard liquor containing more than 22 percent alcohol by volume, and that is also distributed to the counties on a per-capita basis. The real property transfer tax is the \$.55 per \$500 of the value on a transfer of real property between people. This is sourced to the county in which the transfer occurred. Then you have a portion of the \$.04 basic governmental services tax. This is what you pay when you register your vehicle each year. There is a statutory distribution

formula for distributing the proceeds from this between the State General Fund, State Highway Fund, school districts, and the county. This is the portion that is distributed to the county. So those are five of the six revenue sources that go into the first tier of the CTX to be distributed to the local governments within the county.

In the second column, highlighted in orange [[Exhibit F](#)], is the SCCRT. This is the rate we have previously talked about. It is 1.75 percent. Here you see the statutory distribution formula allocating the SCCRT money between the guaranteed counties highlighted in green and the non-guaranteed counties. As stated, the way that works is you have to do the calculation for how much the guaranteed counties get for a year, and then they are distributed one-twelfth of that amount each month. Then the amount of the SCCRT tax that is above the guaranteed amount is required to be distributed among the non-guaranteed counties as the share of their actual SCCRT collections to the total SCCRT collections for the non-guaranteed counties. This shows the distributions for FY 2018 for those six revenue sources under the statutory provisions.

Table 2A uses the Demographer's estimates—what the Department uses to do the calculation for the SCCRT. Table 2B shows the distributions that would have occurred for the SCCRT had the Department used the Census estimates I showed you in Table 1A [[Exhibit E](#)]. Table 2C [page 2, [Exhibit F](#)] shows the difference between the Census population estimates versus those that were done in Table 2A using the Demographer's estimates. As you can see here, and what was referenced by Deputy Director Hughes, there may not be any impact, and I would argue it is relatively de minimis. The change in the distribution among the guaranteed counties would have been approximately \$14,000 for FY 2018 had the Department used the Census estimates versus the Demographer's estimates, and because of the approximately \$14,000 going to the guaranteed counties, that reduced the amount for distribution to the non-guaranteed by that approximately \$14,000. What is worth referencing here, and the point made by Deputy Director Hughes, is this is using the Census estimates for these years that exist now. The Census estimates do change versus the Demographer's estimates, certified by the Governor, those are fixed, so that would be one of the issues. The Census estimates are sort of a moving estimate because of the methodology they use versus the statutory requirements in place for the State Demographer.

Table 3 [[Exhibit G](#)] shows the results for FY 2019 in terms of using the information from Table 1B [[Exhibit E](#)]. You see again the change on net is a little larger at around \$227,000 had the Department used the Census estimates versus the Demographer's estimates to do the SCCRT distribution [page 2].

So we have discussed the first tier of the CTX is for distributing revenues to the county—the revenue amounts available from those six revenues distributed to local governments within the county based on the statutory provisions in NRS 360.680 and NRS 360.390, for determining the second tier distributions. Table 4 [[Exhibit H](#)], with the purple banner across the top, shows the second tier of the CTX distribution. The proceeds are distributed as base allocation and excess allocation amounts.

The base allocation takes the amount of CTX that was distributed to the local governments in a county that is eligible to receive it—those would be counties, cities, towns, special districts, and enterprise districts—and adjusts that amount for the CPI. That is their base amount to be distributed for the current fiscal year. The Department is then required to distribute one-twelfth of that FY base amount to the local governments based on the base share allocation, to the extent there is enough actual revenue generated. So that is the base allocation.

The excess allocation is where you see the statutory provisions the Department is asking to be removed from NRS 360.690—the calculation provisions for the excess distribution. The excess distribution shares are based on factors using the five-year average growth and population, the five-year average growth and assessed valuation, then doing a mathematical calculation to calculate what the excess distribution share is. The excess distribution is only if there is more than enough money to cover the base allocation for a month, then the excess is distributed based on these shares that come out of that mathematical calculation.

The orange-shaded column on the left-hand side shows the five-year average population growth rate based on the Demographer's estimates for the entities eligible to receive money from second-tier CTX distribution. Looking specifically at Carson City, the results for the FY 2018 calculation were -0.31 percent. The column shaded in yellow is the Census estimates and those would have been -0.19 percent. That would be the change in the five-year population estimate that would be run through the mathematical formula for calculating the excess distribution shares. I have listed all the counties, and within the counties the entities. You can see for special districts there is no population, so their factor is driven off the five-year average growth in assessed value. That is why I put "not applicable" here. We do not have to worry about doing the calculations for special districts.

On page 2 [[Exhibit H](#)], you see Clark County that has cities, towns, and special districts. As Deputy Director Hughes pointed out, and one of the issues here—one I think causes some tension with regard to administration of these provisions—the Census is preparing estimates for only counties and cities. They are not providing and preparing estimates for towns. Now the law requires the Demographer to prepare estimates for counties, cities, and towns. Why? Because you have towns getting money from the CTX and you need population estimates to be able to calculate the five-year average growth. You can see here you have a mismatch if the Department is supposed to switch over and use the Census estimates. They would have them for counties and cities but not for the towns. You start getting apples and oranges here—you have Census estimates and use those for one group, counties and cities, then use the Demographer's estimates for the towns because that is all you have. I wanted you to see the point Deputy Director Hughes was making, in the real-world data that we have available, and what it would mean to go through the calculations.

The right-hand side of the table is the same information, but the calculations are for FY 2019 in terms of the five-year average based on the Demographer's estimates and five-year average growth based on using the Census estimates. Because the five-year average population growth is part of the calculation formula for determining how to distribute the excess to local governments through the second tier, you can see there would be this issue.

The final table [Table 5, [Exhibit I](#)] is taking those five-year average population estimates for the Demographer, which is what was done by the Department, and doing the calculations for the excess distribution shares. This is what Mr. Kevin Williams does for the Department. He does these calculations and does the distributions for the first and second tier every month for the CTX. The left side is for FY 2018. The orange-shaded area is the allocations done at the second tier, which the Department did using the Demographer's estimates, and the yellow-shaded area would have been the distributions amount using the Census population estimates for those five-year average growth rates, and then driving them through the mathematical calculations.

Then you can see the change in dollar amount. For Carson City, you see here and in Table 2C [[Exhibit F](#)] the difference in the SCCRT distribution is \$302. That is what you see balancing out here. Because the second-tier distribution is a zero sum gain within a county, if you are going to change people's shares, you change them in a way such that if you have a difference in a dollar and you are going to change the allocation of that dollar amongst the entities, you still have to get back to the sum of the changes among all the entities within a county must sum back to one. That is the CTX at the second tier within a county.

When you at this table [[Exhibit I](#)] you see the amounts shown for the county totals for FY 2018 and FY 2019 are going to balance back against the amounts you see in Table 2C [page 2, [Exhibit F](#)] and Table 3C [page 2, [Exhibit G](#)] for the SCCRT. In a nutshell, what would happen is the Census estimates could change the estimates for the SCCRT and thus be changing the first-tier amounts that go to the guaranteed counties directly, and then indirectly changing the amount that would be distributed amongst the non-guaranteed counties. And since the amount is changing in the first tier, those amounts go into the second tier, but within a county, it is a zero sum gain for the distributions.

In putting these tables together, your Fiscal staff and the Department worked through this issue to see what it would potentially mean for this language to be administered, and if the conflict is that every year Census estimates are supposed to be used if they are in conflict with the Demographer's. As your Fiscal staff, I would offer to you that possibly one of the practical effects, and I doubt it would be the intended effect, is the rarer thing would be for the planets to align such that the Demographer's estimates and the Census estimates matched for every county and city. So almost every year in and year out, could they be close? Could they even be equal for some, but for all of them? Thus, year in and year out, there would be a conflict. In the numbers in Table 1 [[Exhibit E](#)], there is a conflict for every county. There is a conflict for every city. What would be the effect of this law if administered? I would offer to basically nullify using the Demographer's estimates because the Department is supposed to be using the Census estimates, so you have a statutory process for the

Demographer's estimates to be prepared and then be used, but then turn around and have to use the Census estimates when there is a conflict. I wanted to make that observation, as your Fiscal staff, having looked at this bill, the issue, and working through the data to get the full understanding of what the potential could be for this provision to be administered by the Department.

I realize this was a lot of information about the bill with regard to the population issue, and also the first and second tier. I can attempt to answer any questions. We also have the Department of Taxation here which actually administers the first- and second-tier provisions of the CTX.

**Chair Cohen:**

I want to ensure we are all on the same page. This bill is not about changing the CTX, correct?

**Russell Guindon:**

From your status point of view, that is correct. It is about these provisions with regard to the language you see and read in the bill, about the requirement to use the Census estimates when they are in conflict with the Demographer's estimates, and as Chief Deputy Director Hughes pointed out, there is potentially some ambiguity as to what conflict means. Does it mean every year you use the Census estimates because they are preparing annual estimates just like the Demographer, or is it supposed to be a Census thing every ten years? I would argue even the mathematics will get complicated if every ten years you are supposed to try to switch over to the Census estimates. But you can see here you need to do a five-year average growth. The Census is a point estimate for one year. You would then have to start to blend either with the Census and/or the Demographer to calculate a five-year average. So as Deputy Director Hughes pointed out, even if you were supposed to do this on a decennial basis, you still have a mathematical issue that potentially has to be addressed.

**Chair Cohen:**

What happens if we do not pass this bill? How does that impact the Department and how determinations are made?

**Melanie Young:**

This is a hard conversation to have. When this was brought to our attention, we investigated the matter and found this would be mathematically problematic, especially going back to 1999 when this provision was put into place. We would have to go back and likely recalculate that information. As Mr. Guindon has provided in his spreadsheets, he demonstrated the change might necessitate pulling back revenues that have already been distributed to local governments, moving some from one county to another, some de minimis and others it might be a little bit larger number. But this would take quite a bit of time if this bill is not passed to rectify that situation.

**Chair Cohen:**

The consolidated tax distribution (CTX) is very complicated. We know that. Just to confirm, with CTX it is required to look at population growth of towns, but the information from the Census is not providing that. Is that correct? The Census is looking at counties and other things, but not the towns that are required to be examined for CTX?

**Melanie Young:**

The federal Census numbers will determine the counties and the cities but does not determine the towns. So when the Demographer does his population numbers, it is the counties, cities, and unincorporated towns.

**Chair Cohen:**

And that is required for CTX, correct?

**Melanie Young:**

That is correct.

**Chair Cohen:**

I wanted to ensure we are very clear on that. Mr. Guindon, do you have anything to add?

**Russell Guindon:**

That is a very good question. As you stated, the statute says there has to be this calculation done to distribute the money under the CTX to all those entities listed in the table—counties, cities, towns, enterprise districts, and special districts. To be able to do the calculation, the three entities that involve population are counties, cities, and towns. As has been stated here, you have the Census only doing it for counties and cities and the Demographer doing it for towns.

The Department would have to use the Census estimates to determine the five-year average growth rate for counties and cities, but then turn around and use the Demographer's estimates for towns. That is just math, but you can see that you are running into a situation where you have the Demographer using a methodology to prepare their estimates for counties, cities, and towns simultaneously, and then you have the Census preparing estimates for counties and cities, and you are going to blend the Census estimates for counties and cities with the Demographer's estimates for towns to calculate these five-year average growth rates to drive through the excess CTX calculations. I think that would potentially become problematic, given my history as your Fiscal staff with the CTX as a distribution mechanism.

**Chair Cohen:**

I want to remind the Committee that Mr. Hardcastle, the State Demographer, is available to answer questions. I will also let Mr. Hardcastle make any statement he would like.

**Assemblywoman Benitez-Thompson:**

This is not so much a question as just that I am a big fan of our State Demographer and the work he does. I love the website. I love all the reports you produce. I am referencing one for one of my bills because people seem to think how we estimate populations, or what the composite of what our population might look like, is some type of magical thing. I tell them it is not; it all exists in the Department of Taxation. I am also a big fan of the State Demographer living in the Department of Taxation.

**Chair Cohen:**

I am not seeing any other questions from the members of the Committee. Mr. Hardcastle, do you have a statement you would like to make or testimony on the bill?

**Jeff Hardcastle, Nevada State Demographer, Office of the State Demographer, Department of Taxation:**

I would like to thank Assemblywoman Benitez-Thompson for her compliment. I am here, just as a rule, to answer questions at this time. If you start me talking about population estimates, I could go on for a couple of hours. It is probably best just to answer questions.

**Chair Cohen:**

I am not seeing any other questions from the members of the Committee. Director Young, do you or any of your staff have other testimony?

**Melanie Young:**

Yes. I want to thank you and your Committee for hearing this bill. I would like to shout out to Mr. Guindon and the "Tax Team" for all the spreadsheets and calculations they have put together to give a visual depiction of our testimony today. We realize this is a hard conversation to have, coming forward from the Department on a statutory change to remove language implemented in 1999 that the Department never implemented for the distribution of state tax revenues to the local governments.

When our internal auditor brought this to the executive team's attention, we investigated the matter thoroughly, reviewed the requirements, and if we were to implement the statute, the issues surrounding that became readily apparent. We believe if the statutory provisions were implemented, the Department and/or local governments would have come forward during a legislative session to make the necessary changes. We do view this matter as a housekeeping item since we have never used the Census totals. Our goal with this bill is to align the statute with our processes with no impact to the local governments.

Currently, the way the statute is written, it makes the calculation of the distribution process mathematically problematic. If the Census totals were to be used, with the timing issues of when they are published and they are continually updated, it creates conflicts of what population numbers to use and when, as well as the point in time the data is developed for. Additionally, the Census does not determine the populations of unincorporated towns. Since we have always used the Governor's certified population numbers and will continue to do so if this bill is passed, there should be no effect on local governments. Furthermore, the

population counts developed by the Demographer and certified by the Governor, the local governments do have a local due process. As you have seen in some of the exhibits and in previous hearings, there has been some opposition from local governments, although indirectly related to this bill, about how the Demographer develops those population estimates. I would like again to place on the record that the Department is willing to continue to work with local governments as we transition.

I would like to share with you that Jeff Hardcastle has announced his retirement, and he will be retiring at the end of June. I would personally like to thank Mr. Hardcastle for all the work he has done for the state of Nevada, and the work he does in determining not only the federal Census but the population numbers here in Nevada. The Department has interviewed for Mr. Hardcastle's replacement and is working to finalize that process. We have discussed the plan with local governments on what the first six months of the Demographer's job would look like, and that includes outreach to local governments. We thank you for your time and consideration of this proposal. This concludes our remarks.

**Chair Cohen:**

Thank you very much Director Young, and certainly we also appreciate the work you have been doing [unintelligible] in the first place, realizing that there were probably some issues that needed to be addressed and finding them for us. With that, seeing no other questions from the members of the Committee, we will go to the phones for those in support. [There was no one.] Do we have anyone in opposition on the phone? [There was no one.] Do we have anyone in neutral on the phone? [There was no one.]

Director Young, was there not some concern expressed from the municipalities when this bill was heard in the Senate Committee on Revenue and Economic Development? I believe you have been working with them. I want to put on the record you are continuing to work with them and that work is moving forward.

**Melanie Young:**

Yes. We will continue to work with local governments as we bring on the new State Demographer, and as the new State Demographer has an opportunity to work with Mr. Hardcastle through his retirement, we will definitely be working with the local governments on improvements in our processes and/or changes necessary.

**Chair Cohen:**

I apologize. I overlooked Mr. Luke from the City of North Las Vegas on the Zoom call.

**Jared Luke, Director of Government Affairs, City of North Las Vegas:**

We are repealing our previous position of opposition to this bill and replacing it with being neutral. Director Young pretty much wrapped it up for us. The reason we were originally in opposition to S.B. 74 is because in opening the NRS, having just gone through an appeal process with population estimates, there was some concern on our end and some other local



governments that the difference in variables in the regression models being used caused some confusion and some questions. We were looking at taking away the Census numbers as kind of removing a cap, or a check to the process, if you will.

I want to thank Director Young and her staff for meeting with us for multiple conversations, explaining the intent of this bill and why they are moving forward. We were then able to reflect and talk to them about our issues and concerns with the regulatory process. I appreciate her committing again on the record that she has volunteered to work with us and we have accepted that. We look forward to working with Director Young, her team, and the new State Demographer. Those are big shoes to fill. Some transparency and clarity revolving around the actual process by which you cannot use the same variables for a county or a city that you use for a town are some of the things I hope we will be working on and looking at down the road. I would like to thank Mr. Hardcastle and wish him well in whatever his next adventure is. Also, I applaud Mr. Guindon for his understanding of CTX and his ability to explain it with such animation.

**Chair Cohen:**

Thank you for your presentation, Director Young and Deputy Director Hughes. Also, thank you to Mr. Hardcastle and Mr. Guindon. With that I will close the hearing on S.B. 74. Do the members of the Committee have any comments? [There were none.] I will now open the hearing for public comment. Do we have any callers for public comment? [There were none.] Mr. Daly, please proceed. You have three minutes.

**Christopher Daly, representing Nevada State Education Association:**

Today is April 15 and that is tax day in non-pandemic times. This is a great day to talk about the importance of generating revenue necessary to provide the services relied on by Nevada's families. For the Nevada State Education Association (NSEA), we often talk about the importance of funding public education.

In February, hundreds of educators in red scarves and face coverings convened in Carson City, lining the street from the Legislative Building to the Capitol asking you to dig deep to address our budget challenges. After sustaining difficult cuts last summer in the 31st (2020) Special Session, K-12 public education is again threatened this session with difficult General Fund cuts. This includes a proposed \$33 million cut to the Read by Grade 3 Program, which provides critical early literacy supports, and \$156 million in proposed cuts to class-size reduction despite already having the largest class sizes in the country. Emergency assistance from the American Rescue Plan Act of 2021 will certainly help schools address pandemic-related issues and is greatly appreciated, but these funds are one-time and will expire in 2023. Ranking near the bottom of states in per-pupil funding, Nevada's public schools and other vital services deserve new state revenue, not just continued austerity.

The Nevada State Education Association believes a strong start would be the passing of Assembly Joint Resolution No. 1 of the 32nd Special Session—generating \$485 million in new revenue for Nevada annually. Meanwhile, Senate Bill 346 to establish parity for the digital versions of products subject to sales tax is still alive in the Senate. As the emerging

economy increasingly moves to digital format, S.B. 346 would close a loophole in the collection of sales tax, which is only applied to the purchase of physical products. Together, A.J.R. No. 1 of the 32nd Special Session and S.B. 346 would make a strong revenue package to move Nevada on the correct course to address our chronic revenue shortfalls.

For years, educators have been calling on our leaders to invest in Nevada, and now is the time to take bold steps to meet our state's needs. We need our leaders to have the courage to stand up and demand new and progressive revenue to move Nevada up from the bottom of the education funding lists. We believe our Legislature and this Committee have the opportunity now to advance a package of revenue proposals to take this big and bold step in addressing our funding challenge.

**Chair Cohen:**

Committee, to give you the lay of the land, as you know, the priority is going to be getting bills out of the house, so please pay attention for our agendas coming out. There will not be a meeting this coming Tuesday. Thank you for your attention today and thank you to our staff, you are very much appreciated. We are adjourned [at 5:50 p.m.].

RESPECTFULLY SUBMITTED:

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Gina Hall  
Committee Secretary

APPROVED BY:

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Assemblywoman Lesley E. Cohen, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Senate Bill (SB) 25," presented and submitted by Shellie Hughes, Chief Deputy Director, Department of Taxation, regarding Senate Bill 25.

[Exhibit D](#) is a copy of a PowerPoint presentation titled "Senate Bill (SB) 74," presented and submitted by Shellie Hughes, Chief Deputy Director, Department of Taxation, regarding Senate Bill 74.

[Exhibit E](#) is a table titled "Table 1," presented and submitted by Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, regarding Senate Bill 74.

[Exhibit F](#) is a table titled "Table 2," presented and submitted by Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, regarding Senate Bill 74.

[Exhibit G](#) is a table titled "Table 3," presented and submitted by Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, regarding Senate Bill 74.

[Exhibit H](#) is a table titled "Table 4," presented and submitted by Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, regarding Senate Bill 74.

[Exhibit I](#) is a table titled "Table 5," presented and submitted by Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, regarding Senate Bill 74.