MINUTES OF THE MEETING OF THE SUBCOMMITTEE TO STUDY THE COST OF MAINTAINING HIGHWAYS, ROADS AND STREETS OF THE LEGISLATIVE COMMITTEE FOR LOCAL GOVERNMENT TAXES AND FINANCE

August 22, 2002

The meeting of the Subcommittee to Study the Cost of Maintaining Highways, Roads and Streets of the Legislative Committee for Local Government Taxes and Finance, (NRS 218.5388 to NRS 218.53886, inclusive) was called to order by Marvin Leavitt, Chairman, at 9:40 a.m. on August 22, 2002, at the Grant Sawyer Office Building, 555 East Washington Avenue, Room 4401, Las Vegas, Nevada, and via simultaneous video conference at the Legislative Building, 401 South Carson Street, Room 3138, Carson City, Nevada. Exhibit A is the Meeting Notice and Agenda; Exhibit B contains the Attendance Record.

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Marvin Leavitt, Chairman
Mike Alastuey
Linda Ritter
Claudette Springmeyer
Philip Stoeckinger

SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Bob Anderson
John Sherman
Terri Thomas

SUBCOMMITTEE MBERS ABSENT:

Guy Hobbs
Janet Murphy

LEGISLATORS PRESENT:

Assemblyman David Parks

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Deputy Fiscal Analyst, Fiscal Analysis Division
Ted Zuend, Deputy Fiscal Analyst, Fiscal Analysis Division
Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division
William L. Keane, Principal Deputy Legislative Counsel, Legal Division
Carol Thomsen, Interim Secretary, Fiscal Analysis Division

EXHIBITS:

Exhibit A: Meeting Notice and Agenda Packet
Exhibit B: Attendance Rosters
Exhibit C: Written layout based on a PowerPoint presentation submitted by Marty Manning, Clark County Director of Public Works.

Call to Order/Opening Remarks

Chairman Leavitt called the subcommittee to order and stated members should attempt to resolve the issues that could result in proposed legislation for the consideration of the 2003 Legislature.

Chairman Leavitt indicated he did not anticipate taking action regarding changes to the second tier gas tax distribution formula, but the subcommittee might consider the elimination of road miles maintained by the state, or an entity other than local governments, from that formula. Chairman Leavitt noted that road miles and population were the two factors used for finalization of the first tier distribution formula, with population weighted two-thirds and road miles one-third. Distribution scenarios had been prepared for the subcommittee for the second tier formula utilizing those two factors in various combinations, from a split of 10 percent population and 90 percent road miles, to 90 percent population and 10 percent road miles. Chairman Leavitt pointed out that those scenarios resulted in fairly substantial changes, particularly in the area of decreased revenues for counties and increased revenues for cities.

Chairman Leavitt suggested that the subcommittee select a county that included both county and city entities, such as Elko County, and meet with public works personnel in those entities to solicit details regarding their road operations, such as how far from central areas road crews were located, and what type of roads were being maintained. He believed a visit to such an area might provide additional ideas regarding the second tier distribution formula. Chairman Leavitt indicated that the end result for the subcommittee should be creation of a formula that fairly represented the responsibilities of both cities and counties in providing maintenance for roads and streets. Area was one factor currently used in the second tier distribution formula however, stated Chairman Leavitt, during review of the first tier formula, it had been determined that area was not a viable measurement. He felt that perhaps the issue of area or size might be useful in the second tier formula, particularly since counties provided maintenance to roadways throughout the total area, while cities maintained only those roadways within marked boundaries.

According to Chairman Leavitt, a review by the subcommittee of actual responsibilities onsite might prove to be of assistance in determining whether area or size should be a factor in the second tier distribution formula. He mentioned Elko County because it contained at least four cities and was a fairly large county, therefore, would provide a good basis for making determinations. Ms. Ritter indicated that Elko County would be happy to host members of the subcommittee. She believed it was a very good example of a large county that contained incorporated cities, and noted there were concerns in both the rural and urban areas.

Chairman Leavitt stated that members of the Legislative Committee could also be invited to participate in the tour. Ms. Ritter commented that perhaps the subcommittee could advise Elko County regarding the information it was seeking, which would allow the county to gather data regarding road miles, such as the type of roads, the capacity of roads, and the impacts on roads, and provide it to members prior to the scheduled visit. Chairman Leavitt advised that information should include the location of road crews, storage of equipment, and time spent in outlying areas.

Mr. Alastuey suggested that representatives from public works departments may wish to acquaint the subcommittee with factors that might not be addressed by mileage and population alone. It was very tempting to determine that the second tier distribution formula could be solved in a fashion similar to the first, but factors such as urbanized counties with adjacent incorporated cities, interspersed with travel patterns through counties, or specific impacts from nonresident travelers, should be factored into the formula as well. Mr. Alastuey believed the subcommittee should be convinced that whatever formula changes it recommended in the future would bear some reasonable relationship to the responsibilities of the various entities. It should be noted that was not to beg desperate pleadings from public works departments in cities or counties, but simply to lay out in a rational fashion what those entities were facing.

Approval of the May 16, 2002, Meeting Minutes

Chairman Leavitt called for a motion to approve the minutes of the May 16, 2002, meeting of the subcommittee.

> MS. RITTER MOVED TO APPROVE THE MAY 16, 2002, MINUTES OF THE SUBCOMITTEE TO STUDY THE COST OF MAINTAINING HIGHWAYS, ROADS AND STREETS OF THE LEGISLATIVE COMMITTEE FOR LOCAL GOVERNMENT TAXES AND FINANCE.

MR. ALASTUEY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Leavitt opened discussion on Agenda Item III.

Discussion and Possible Action Regarding Modifications to the Intracounty (Second Tier) Distribution of Revenues from Certain Taxes on Motor Vehicle Fuel

Russ Law, P.E., Operations Analysis Engineer, Nevada Department of Transportation (NDOT), noted that the subcommittee had requested information regarding the possibility of using vehicle registration as a factor in the formula in lieu of population and the possibility of using weight of vehicles traveling on pavement in counties versus cities in that formula. The subcommittee had also requested information regarding the number of alternative fuel vehicles.

Mr. Law called the subcommittee's attention to Exhibit A, page 28, which contained a chart depicting the relationship between vehicle registration and population by county. Mr. Law indicated that if he were the State Demographer, he would use that information in an attempt to predict population numbers, because there was such a strong correlation between vehicle registration and population, both on a statewide and county-by-county basis. Referencing the information for Churchill County, Mr. Law pointed out that the ratio between vehicle registration and population was 1.12 in 1994, 1.11 in 1995, 1.07 in 1996, and back to 1.11 in 1997, which indicated the numbers fluctuated similarly to those for population, however, remained fairly stable. Some counties experienced very little change, and Mr. Law noted that from 1995 to 1996, the ratio for Eureka County decreased from 1.46 to 1.31, which was typical for the smaller counties and was often caused by fluctuations in mining activity. Mr. Law explained that there could be a large population influx without persons necessarily reregistering vehicles in Nevada. Mr. Law reiterated there was strong correlation on a county-by-county basis between vehicle registration and population.

Chairman Leavitt stated it was interesting that Clark and Washoe Counties had fewer vehicles per person than the smaller counties. According to Mr. Law, it was often believed that persons in Clark County had more money per capita, and therefore, more vehicles, but it appears that possibly because people in rural areas had more places to store vehicles, they had more vehicles per capita. He concurred that there was significant difference in the vehicles per person ratio between counties.

Ms. Ritter pointed out the differences between Elko and Eureka Counties, and noted the mines in that area were located in Eureka County. Although the vehicles owned by the mines were registered in Eureka County, they were often driven to Elko County, which reflected the outcome when an industry was located in one county, while the people lived in another. Chairman Leavitt agreed that factor could make a difference in the ratio.

Chairman Leavitt inquired whether the information presented by Mr. Law included vehicles registered by companies and corporations. Mr. Law stated it included all vehicles registered under "regular" registration with the Department of Motor Vehicles (DMV). There were two types of registrations, "regular" registrations and Motor Carrier registrations, and Mr. Law explained the Motor Carrier side consisted overwhelmingly of large truck registration, while the "regular" side consisted overwhelmingly of personal vehicles, such as passenger cars, pickups, or recreational vehicles. Typically those were vehicles weighing less than 26,000 pounds.

Chairman Leavitt asked whether such information was available below the county level, because should the subcommittee decided to use that factor in the second tier distribution formula, it would also need the information at the city level. Mr. Law replied that the information was available through the use of zip codes. He warned the subcommittee that data at that level could be somewhat distorted because at times persons used a mailing address for registration purposes which often differed from the address at which the vehicle was located.

Based on the information provided by Mr. Law, Chairman Leavitt indicated it did not appear there would be much gained by using vehicle registration as opposed to population. He asked whether Mr. Law believed there was anything that would make use of vehicle registration more appropriate for the second tier distribution formula than population. Mr. Law commented that population and vehicle registration measured the same factor, and given the fact that population was used as a factor in other distribution formulas, his preference would be for continued use of that factor. The information depicted on page 28 of Exhibit A was provided to point out the strong correlation between vehicle registration and population.

Mr. Law referenced the information on page 29 of Exhibit A regarding traffic-load comparisons between counties and cities, and introduced Michael Lawson from the Traffic Information Division, NDOT, as an expert regarding such information. Mr. Lawson had assimilated the information contained in the exhibit to discern the actual number of "pavement-loadings" or equivalent single axle load (ESAL) miles in cities versus counties. He clarified that an ESAL mile was the standard used to measure the weight pavement was subjected to when a vehicle travels. An ESAL mile was the equivalent of an 18,000-pound single-axle vehicle traveling one mile.

The information contained in Exhibit A, page 29 depicted a comparison of ESAL miles to population and road miles for counties and cities for the counties that contained cities. Mr. Law stated that road miles, population, and ESAL miles depicted on page 29 for counties were devoid of any data pertaining to cities, and city data was listed individually under each county. Mr. Law stated he had compared the ratio of ESAL miles to population and road miles to ascertain whether there was a good correlation to population.

Continuing, Mr. Law referenced the charts on pages 30 and 31 of Exhibit A, and noted that page 30 contained a logarithmic scale of annual vehicle miles of travel (AVMT), ESAL miles, population, and road miles pertaining only to Nevada cities, and he pointed out there was a very strong correlation between all factors. He explained a logarithmic scale was one on which each line on the scale was a power of 10 higher than the line below it. The county data on page 31 depicted a strong correlation between vehicle miles of travel (VMT) and ESAL miles and a fairly good correlation between population and ESAL miles. Mr. Law noted however, that the correlation for road miles was fairly poor.

Mr. Law indicated that the range of values for ESAL miles to population on page 29 was anywhere from 64 to 933. Overall, the statewide ratio was 163 ESAL miles per capita in counties. The range of values for cities was somewhat more extreme than it was for counties, but Mr. Law explained it was generally in a narrow range with the exception of Fallon and Ely. Fallon had a ratio of ESAL miles to population of only 5, while the overall ratio in Ely was 138. The overall ratio was 79. Mr. Law explained that a road with a high volume of traffic, including truck traffic, could be transferred into the state system in exchange for smaller routes that might be longer, but such a trade would result in the loss of most of the ESAL miles based on truck travel. Because of such situations, Mr. Law stated he was somewhat leery of utilizing pavement loadings or ESAL miles as a preferred method of distributing revenue, because roadways could often be transferred into the state system and removed from a city or county system, or visa versa, which would dramatically change the ratio of ESAL miles.

The correlations between ESAL miles and road miles, explained Mr. Law, were somewhat stable at the city level, but were erratic at the county level. The third chart on page 39 depicted the ratio of city ESAL miles to county ESAL miles, and the values had a broad range with the overall being .189. Mr. Law noted that the ratio of city ESAL miles to population in cities versus the relationship between ESAL miles and population in counties depicted a better correlation, with the overall ratio of city ESAL miles to population of .49, which might lead to scaling back population as a factor in the formula. According to Mr. Law, the ratio of ESAL miles compared to road miles for cities and ESAL miles compared to road miles for counties depicted the opposite, with a 2.11 factor of ESAL miles to road miles in counties as compared to the cities, which might lead to crediting the counties with greater ESAL miles on a road mile basis, and only half as much on a per population basis. Mr. Law found it interesting that overall, weighting of ESAL miles to population ratio for cities and counties was .49 and the ratio of road miles for cities and counties was 2.11. Mr. Law indicated that he believed pavement loads might not be a very important factor to consider in the formula.

Mr. Alastuey asked whether the information contained on page 29 might be considered a "wash" or close to a "wash," but widely variant from one part of the state to another. Mr. Law called the subcommittee's attention to page 36 of Exhibit A, and read the following into the record:

> After investigating the relationship between traffic loads in the city as compared to the counties, it appears reasonable to consider traffic loads. The cities generally incur lower loads on a per-capita basis, but higher loads on a per-mile basis. Overall, the cities incur 0.49 times the loads on a per-capita basis,

but 2.11 times the loads on a per-mile basis. As with many of the other possible distribution factors, traffic loads can be buffered by a reasonable combination of population and road miles.

Mr. Law advised the subcommittee that Mr. Lawson was available to answer questions regarding how data was collected and resolved. Chairman Leavitt inquired as to the accuracy of the data. Mr. Lawson stated that was a good question, and would relate to the earlier question regarding whether the information was a "wash." NDOT developed the sample plan based on system-level analysis, and when information was disaggregated to the city and county level, it became much less reliable than it was on a stateside basis. Mr. Lawson pointed out that was why there were variances within the local municipalities to a greater degree than statewide, and also why the data had a tendency to "wash." The data used by NODT was simply not very reliable at the local municipal level, stated Mr. Lawson, but was highly accurate on a statewide level. When you review the total ESAL miles and ESAL miles from one county to another, there was a much better level of reliability than the difference between the cities of Ely and Fallon, or the difference between the city of Ely and White Pine County. Mr. Lawson stated that personally, he would not recommend use of the data for something as significant as the second tier gas tax distribution formula, especially since there were much better measures available, such as the correlation between ESAL miles and AVMT.

Chairman Leavitt stated that in general, it appeared the reliability of the data for the local municipal level was subject to question, and should the subcommittee use that data as a factor in the formula, it would undoubtedly result in numerous appeals. Mr. Lawson concurred. Chairman Leavitt asked Mr. Law to continue his presentation.

Mr. Law thanked Mr. Lawson for his work in compiling the data for the subcommittee, and referenced the material relative to alternative fuel vehicles on page 32 of Exhibit A. The subcommittee had previously requested information regarding those vehicles, and the concern was that the increasing volume of those vehicles would create an effect on fuel tax revenue. Mr. Law indicated that 7,331 vehicles were now considered alternative fuel vehicles, or .61 percent of all vehicles in the state. He pointed out that flexible fuel vehicles made up the dominant proportion at 6,106 vehicles. The flexible fuel vehicles ran on more than one fuel, which was generally gasoline and gasoline/ethanol blends such as "E-85" which meant that 85 percent of the fuel was ethanol. Mr. Law stated the vehicle manufactures were making more and more flexible fuel vehicles, and also pointed out that ethanol/gasoline blends were taxed at the same rate as gasoline in the state, while there was a difference at the federal level. Chairman Leavitt believed that at the present time, the small number of alternative fuel vehicles would not cause a great problem with the normal gas tax collection system in Nevada. Mr. Law concurred, however felt it might be a factor in another ten years.

Chairman Leavitt inquired whether Mr. Law felt the subcommittee should continue to study the alternative fuel factor relative to the future. Mr. Law indicated that during each Legislative Session there was at least one alternative fuel bill under consideration, and generally the discussion revolved around some type of tax break for those fuels that had environmental advantages. He had asked past Legislative Committees to study the issue as a whole, as opposed to reviewing alternative fuel at a time. Perhaps the current and projected use would be a consideration, along with the current and projected effects of those fuels on fuel tax revenue and the environment. The factors that should be considered in development of a fuel tax policy could be determined, and those factors could be applied to the various fuels. For example, he believed that a reduced tax rate on fuels that caused less pollution should be considered, or perhaps an increased rate would be appropriate for fuels that contained a more significant energy content on a per volume basis. A study should be conducted with a view toward development of a statewide fuel policy regarding taxes.

Ms. Thomas agreed with Mr. Law that a statewide policy was needed, but as previously stated, she was unsure whether that particular issue fell within the purview of the subcommittee. Another salient issue would be that the subcommittee already had a multitude of issues to consider. Ms. Thomas said that based on the fact that alternative fuel vehicles composed such a small portion of the statewide total, and perhaps it was an issue for which the time had not yet come.

Mr. Stoeckinger concurred that at the present time, the small percentage of alternative fuel vehicles would not warrant further review. He asked whether there had been any projections based on historical growth information, regarding what the state would be facing in approximately ten years. Mr. Law stated he had seen such projections, and felt they had all been on the high side, because the information had more than likely been provided by persons who had an interest in alternative fuel vehicles, either because they sold that type of fuel, or had engine or other technology that would promote the use of alternative fuel, and therefore they would profit from it. Mr. Law stated over the 12 years he had been compiling statistics there had not been a substantial change in the volume of alternative fuel vehicles. The largest volume of such vehicles in Nevada were used as taxicabs in the Las Vegas area. Mr. Stoeckinger concurred that absent any type of projections, he did not feel the subject of alternative fuel vehicles would warrant further discussion or review by the subcommittee.

Chairman Leavitt inquired whether it would be possible for Mr. Law to accompany subcommittee members on the aforementioned trip to Elko County. Mr. Law felt that was a possibility, but pointed out that his office would be involved in substantial legislative work from September 1, 2002 through early June 2003, however he would attempt to accommodate the subcommittee. Chairman Leavitt felt the trip would be scheduled in the fall, and asked Rick Combs, Deputy Fiscal Analyst, Legislative Counsel Bureau (LCB) whether that was possible. Mr. Combs did not feel the details of the tour would be problematic, as long as it was with the view toward gathering information, as the Bill Draft Request (BDR) deadline was fast approaching. Mr. Combs indicated the subcommittee should inform the Legislative Committee of the planned tour to ensure there would be no problems. Chairman Leavitt stated the subcommittee recognized that the information would not be used for the 2003 Legislative Session, but would be part of its work during the next interim, and asked Mr. Combs to coordinate the timing and arrangements for the tour. Chairman Leavitt asked Cash Minor, Elko County Comptroller, to comment regarding the proposed tour. Mr. Minor stated Elko County would be happy to provide any information or assistance required by the subcommittee.

Chairman Leavitt reiterated there would be no action regarding the second tier distribution formula, with the exception of the possibility of amending the road miles used in the second tier to include only those miles that were actually maintained by local entities, as opposed to the current method, which included state-maintained miles. Chairman Leavitt indicated that action could be taken at the present time, or taken when the subcommittee was ready to take action on the entire formula. Mr. Alastuey was unsure whether the subcommittee should take action regarding road miles on a stand-alone basis, and from a variety of perspectives, intuitively it probably would make sense to do that. If nothing else, perhaps the subcommittee could asked NDOT to regenerate the scenarios based on that one particular change, and not take final action at the present hearing. Mr. Alastuey noted that when the subcommittee was able to schedule the field visit, a determination could be made as to whether to actually recommend that particular change. Ms. Ritter referenced the "hold-harmless" provision, and indicated that should those miles be removed from the formula, the subcommittee would certainly have to consider some type of "hold harmless" provision. That being the case, Ms. Ritter wondered whether the subcommittee should make any changes in the formula at the present time. Chairman Leavitt concurred.

Marty Manning, Director of Public Works, Clark County, referenced a written layout based on a PowerPoint presentation, Exhibit C, and stated there were a few issues he would like to comment on which were relevant to the second tier distribution formula. One of those issues pertained to the relationship between the state and local jurisdictions for the obligation of maintenance and operations. Mr. Manning indicated at present, there were a number of local jurisdictions within the state that were paying part of the cost of maintenance for the state system. That was because the policies of the state resulted in NDOT maintaining only pavement within urban areas. According to Mr. Manning, other things that existed within rights-of-way included costs for which local jurisdictions were obligated to pay, such as traffic signals, street lights, sidewalks, and any other public facilities that fell outside the parameters of road or street pavement. Mr. Manning felt it was important to recognize that within the Las Vegas Valley area, of the 279 centerline miles that the state maintained under its jurisdiction, 184 were within the county, and the county was incurring costs on an annual basis in the amount of approximately $2.4 million. What that meant was the state, at the present time, was recovering virtually half of the county's 2.35-cent gas tax revenue, and received 48 percent back in services that the county was rendering within the state's rights-of-way. Mr. Manning indicated that also applied to cities, and it would appear that local jurisdictions, while enjoying a welcomed partnership with the state, were paying a substantial amount of the state's obligation within urban areas.

In addition, stated Mr. Manning, there was one other item of particular importance within the Clark County area, and that was the very large transient population. That population was larger than the population of most counties within the state, and probably larger than most cities in the state. The transient population represented the tourist population that came to Las Vegas to experience a destination resort, and Mr. Manning advised there were over 140,000 hotel rooms in Clark County, with 36 million visitors each year. That constituted a substantial number of people using the facilities in Clark County, and Mr. Manning pointed out that more than half arrived by road-based transportation. In addition, approximately 60 percent of that population utilized busses, shuttles, taxis, and other types of available services, and was not being included in the discussion regarding the first or second tier gasoline tax distribution formulas. Mr. Manning indicated that Clark County was somewhat concerned about that, because population figures utilized in the distribution of gas tax revenue would appear to be somewhat inaccurate, and discounted the presence of the hundreds of thousands of visitors who used county roads and rights-of-way on a daily basis. The figures also disallowed the revenue Clark County needed to address the true impact that visitors had on road infrastructure

Mr. Manning commented that since population was not dealt with in a completely accurate manner within the distribution formula to date, the only real measure available of the presence of population was vehicle miles traveled (VMT), and the elimination of that particular factor was one of the points under consideration within the distribution discussion. Clark County felt VMT was an important factor, but in lieu of that corrections to population would also be extremely helpful.

Chairman Leavitt referenced the work conducted by local governments regarding miles of roads under the general responsibility of the state, such as Highways 93 or 95, and wondered whether that responsibility extended outside the urban area in Clark County. Mr. Manning noted that the real focus of that expense was in the urbanized area, and concerned the methods used to deal with streets. There was a very strong control of access on Highways 93 and 95, and most of the work within those rights-of-way was handled by NDOT. However, in an urban street environment, there were many other factors such as traffic, pedestrians, bicyclists, and utility operations that made the urban street work. Mr. Manning reiterated that the state only dealt with pavement surfaces, which was obviously an area of expertise for NDOT. Basically, the state dealt with pavement and left the rest up to the counties or cities. The figures contained in Exhibit C only represented road-related costs that had been identified within Clark County's Public Works Department, and Mr. Manning noted there were also other things that happened on the streets.

Chairman Leavitt referenced the prior comments regarding tourists and the effect on the roadways, and asked how those numbers might be used in a formula. He also noted that the "strip" in Las Vegas was a state-maintained highway. Mr. Manning concurred, but stated that a relinquishment resolution had been forwarded to the state. That resolution had been conditionally approved, and would transfer four miles of the "strip" from Sahara Avenue to Russell Road to the county. In addition, Mr. Manning remarked that the county was also undertaking the request for the state to relinquish Flamingo, between I-15 and Paradise Road, as well as Paradise Road between Sahara Avenue and Tropicana. Mr. Manning explained that Clark County had been working with the state to cause some of the roads to be transferred back to the county. Chairman Leavitt inquired whether cities and counties were both working toward the transfer of roads. Mr. Manning believed that both city and county entities had been approached by the state, and all were working on the very slow process, which included detailed land surveying and title work in order to identify all the parcels and pieces included within the rights-of-way. It had been a slow operation, but it was proceeding.

Chairman Leavitt asked Mr. Manning how the subcommittee might address the problem of the tourist population within the formula. Mr. Manning stated that presently there was a very good inventory of hotel rooms throughout the county, along with data available from the Las Vegas Visitor's and Convention Authority which indicated, as a result of its polling and investigation, the types of room occupancy rates. He felt it would be possible to create some type of an "add-on" to the population numbers. Chairman Leavitt stated that would require a method of determination regarding room occupancy for such issues as hotels that realized a larger percentage of tourists arriving by air than by other means of transportation. According to Chairman Leavitt, factoring in such issues would create a very complex formula, and one that would be very difficult to measure. Mr. Manning explained that the information provided regarding occupancy rates were overall averages across the entire population, so there was data available that could be applied quite easily to the formula. Chairman Leavitt felt the formula could consider hotel rooms, but wondered whether that would be reflective of the need for roads and the cost of maintenance. It would be to Clark County's benefit to include such a factor, because of the number of hotel rooms located there, but Chairman Leavitt wondered whether it would be beneficial in the overall formula.

Chairman Leavitt referenced the 1-cent gas tax revenue that was allocated directly to counties and was not shared by the cities and the state, and asked Mr. Manning to address that allocation. Mr. Manning stated that based on what was being proposed in the way of a formula, the additional 1-cent was an important resource for counties that had to deal with substantial distances and areas, such as Clark County. Basically, explained Mr. Manning, Clark County maintenance crews were required to cover all of the roads within the county area, which was done on the basis of a five-year program to support the outlying areas, and the 1-cent allocation was helpful in ensuring continuation of that program. Chairman Leavitt inquired whether Mr. Manning was indicating that because of the 1-cent allocation not shared by the cities, which compensated the counties for distance and area, it might not be appropriate to include a distance factor in the second tier distribution formula. Mr. Manning stated he was unsure, and it would depend on what the distance factor included. He offered Clark County's assistance in defining that factor for the purpose of the distribution formula.

Ms. Ritter questioned the computation for VMT, and asked how that factor was calculated. Mr. Manning stated that NDOT calculated the VMT and could provide the answer to that question. In reply to Ms. Ritter's question regarding VMT, Mr. Lawson explained that it was a function of the distance, times the volume, times the days of the year. For example for 1 mile of roadway with 1,000 vehicles, the formula would be, 1 x 1,000 x 365 to arrive the VMT on that section of roadway for that year. The formula was computed by NDOT for every segment of roadway in the state, and Mr. Lawson explained that NDOT conducted samples and short-term counts to determine the AADT (average annual daily traffic), seasonally adjusted those figures, and provided an estimate for every road segment.

Chairman Leavitt asked about the accuracy of that data. Mr. Lawson replied that the data was highly accurate on a statewide basis within plus or minus 5 percent. Obviously, stated Mr. Lawson, NDOT had a much better idea of the volume of traffic on the higher order roads, such as the Interstate system and principal arterials, or roadways that were highly classified. In fact, NDOT's sample plan was better stratified and accounted for that type of roadway. Mr. Lawson explained that for local roadways, the sample plan was not nearly as adequate, and keeping in mind that the local VMT represented approximately 10 to 15 percent of the countywide totals, NDOT did not have the inclination to attempt to refine those estimates. Mr. Lawson noted that it was similar to ESAL miles, in that higher order roads produced a higher degree of reliability, while the lower order roads produced less reliability. When the data was disaggregated, Mr. Lawson pointed out that it became even more questionable. Proportionately, Mr. Lawson felt the accuracy of data regarding local VMT within cities and counties would be somewhere in the vicinity of plus or minus 20 percent, based on his experience of the fluctuation from year-to-year. The volume estimations were only one part of the equation, and NDOT relied heavily on the local municipalities and counties to provide it with the road mileage.

Mr. Lawson stated that the 2001 Legislature mandated that NDOT perform an audit of the road miles that were certified public road miles, and some anomalies had been discovered in that data, which was currently under review. Both sides of the equation contained margins of error, and for the most part, Mr. Lawson felt VMT provided one of the best estimates available and was certainly less complex than other methods such as hotel occupancy estimates, and how much tourism travel was conducted on the state-maintained system. In general, it was a very realistic estimate statewide, and not too bad at the county level, but when disaggregated to determine the proportion between cities and counties, the information was less reliable. Chairman Leavitt stated he was unsure whether the factor of plus or minus 20 percent was reasonable for a formula by which revenue was distributed.

Chairman Leavitt opened discussion on Agenda Item IV.

Discussion and Possible Action Regarding Issues Related to Linking Fuel Tax Rates to Certain Economic Factors to Ensure that the Tax Rates Rise and Fall in Accordance with those Factors

Chairman Leavitt reminded the subcommittee that considerable discussion had ensued regarding the issue of indexing, with NDOT providing charts and information depicting gasoline tax rates over a period of time. That information pointed out that rates in Nevada had "stair-stepped," continuing with little change for several years, then incurring a fairly substantial increase followed by additional years with little change. The subcommittee had discussed the appropriateness of determining a methodology by which the gas tax rate would be linked to inflation. Chairman Leavitt felt the adjustment should include a percentage distribution for recipients of the various components each year, rather than amending each section to reflect the rate change. For example, if the factor for inflation was 1.07 that would be applied to the total, and when the distribution was calculated, it would be done based on a percentage distribution. Chairman Leavitt felt that would be a very appropriate adjustment to the current system.

Mr. Alastuey concurred, and felt that would be mechanically feasible, and it was possible to envision the language that would accomplish that. Otherwise, you would fragment action throughout the components of the rate, which were instituted in different ways. Mr. Alastuey indicated it was a concept for which the time had come for Legislative consideration, or the rate would continue the same year after year until the value had long since declined, which would result in an additional "stair-step" pattern. The overall information provided by NDOT indicated that if adjustments in the rate had taken place in a staged, rational, annual manner all along, most points on the continuum would not have been much different from the running average. Mr. Alastuey stated indexing should certainly not to be viewed as an attempt to gain revenue without justification, but rather as an attempt to avoid huge increases in the tax rate that would otherwise occur from time to time.

Chairman Leavitt commented that in prior discussions, the subcommittee agreed that indexing would be tied to the Consumer Price Index (CPI), as opposed to the wholesale price of gasoline, simply because of the volatility of those prices. Mr. Sherman basically concurred with the observations made by Chairman Leavitt and Mr. Alastuey, however, indicated there was a funding issue relative to fuel taxes not generating sufficient volume to deal with road maintenance around the state at both the state and local levels. Setting up the mechanics of such an adjustment would obviously have to include dates that could be utilized by NDOT to conduct the indexing, and the effective date of the change. Mr. Sherman stated that on the downside, if disinflation were to occur, consideration should be given to possible limitations of downward adjustments.

Mr. Stoeckinger also voiced support for the idea of indexing, but questioned whether the current tax rate would be raised to the appropriate level to correspond to the CPI, and then proceed forward with indexing. Chairman Leavitt suggested that inflation could be measured as of June 30, 2003, with the first adjustment made on June 30, 2004, which would provide a sufficient timeframe for passage by the Legislature, without creating an immediate increase in the rate and basing it on the future CPI. Chairman Leavitt believed that such a system would be easier for Legislators to approve.

Mr. Anderson stated the subcommittee had discussed a five- or ten-year moving average for the index, and noted if indexing were applied immediately, it would create an artificial layer added this year or next, because inflation was quite low. However, a five-year average would be approximately twice that amount. Chairman Leavitt asked whether the subcommittee felt it would be reasonable to take the average of the five preceding years on June 30, 2003, and move forward from that point with indexing. If that was agreeable to the subcommittee, Chairman Leavitt stated he would accept a motion to recommend indexing for the tax rate. He noted the exceptions outlined in Exhibit A, Tab IV, and asked Mr. Combs to explain.

Mr. Combs informed the subcommittee that Chapter 590 of Nevada Revised Statutes (NRS) contained two small increments of the gas tax, an inspection fee and a petroleum cleanup fee. Throughout the interim, the reason for considering the issue of indexing was basically because of the inflationary increases in highway construction costs, and those two fees did not appear to be related to highway construction costs. Therefore, the rationale for applying indexing might not apply as well to those increments as to the various other components of the gas tax.

Ms. Thomas referenced page 43 of Exhibit A, which contained a timing procedure that would have the DMV, on or before April 1 of each year, determine the increase in the CPI for the preceding calendar year, with imposition of the rate on July 1. Ms. Thomas felt that might be a better timeframe. Chairman Leavitt stated that would create a yearly average with a better sequence which included several months after the actual close date to determine the CPI and three months to implement the rate increase. Ms. Thomas stated the gas tax projections would have already been released in the final form on March 15 by the Department of Taxation, and local governments would know what the CPI indicator would be prior to filing final budgets, which would be good timing.

Ted Zuend, Deputy Fiscal Analyst, LCB, stated he would like to clarify a few issues, to facilitate drafting of the BDR, and asked whether the subcommittee anticipated that the first tax increase would go into effect on July 1, 2003, or July 1, 2004. Chairman Leavitt indicated he believed the effective date would be July 1, 2004. Mr. Zuend stated it would be his suggestion that the CPI be reviewed through December 2003, and benchmarked at that point for either a moving or fixed average. Mr. Zuend pointed out that the subcommittee should decide whether to use a moving or fixed average, in order to clarify the issue for drafting purposes. Regarding the issue of a possible decrease in the tax rate, if the subcommittee used a five-year moving average, it was very unlikely that the rate would decrease in the future. Chairman Leavitt opined that there were some real advantages in using a moving average, particularly if there was a downward aberration in the rate over a one-year period. Also, if for some reason there was as much as a 10 percent increase in one year, the moving average would act as a modification factor and would eliminate huge increases in the tax rate.

Mr. Zuend agreed that a moving average would make the process much smoother, and added the subcommittee should also consider whether the entire rate should be indexed based on the overall rate. That would vary from county-to-county, and would have to apply individually to the 17 counties. DMV was the entity that actually managed the money, and was required to change its computers to reflect the current rate, so perhaps DMV should be the entity determining the increase in the CPI during the preceding year. DMV would obviously be required to administer the tax, and send notification regarding the increase in rates. Mr. Zuend noted that it would make sense to round the overall rate to the nearest one-tenth of 1-cent, and then allocate the increase proportionately among the various components.

Kim Marsh Guinasso, Principal Deputy Legislative Counsel, LCB, stated she was concerned about the timing element, and requested clarification. Ms. Thomas stated that she concurred with the use of April 1 to determine the increase in CPI for the preceding calendar year, and the effective date of July 1. Chairman Leavitt concurred, and inquired whether there were further comments from subcommittee members or members of the audience.

Fred Hillerby, representing Washoe Regional Transportation Commission (RTC), noted that one political consideration that the subcommittee might consider would be a cap to the rate increase. Inflation had slowed during the past two to three years, and Mr. Hillerby advised that the RTC also considered a cap when it discussed the issue of indexing.

Daryl Capurro, Managing Director, Nevada Motor Transport Association, stated his concern with respect to indexing or increased taxes based upon a particular formula, was the impact such action would have with regard to Nevada businesses who sold those fuels. In the area of gasoline sales, Nevada did not share revenue with other states, and other states did not share revenues with Nevada, unlike the situation with diesel fuel which was based on miles traveled in each jurisdiction. Mr. Capurro explained that at some point in time there might be concerns about the differential in price between gasoline sold in the State of Nevada as opposed to areas contiguous to it, such as Elko County, which was close to Utah and Idaho; Clark County, which was reasonably close to both Arizona and California; and the Reno area, which was 13 miles from the California boarder.

Even with all of the different tax schemes in California, Mr. Capurro noted that fuel prices in Reno compared to the price in the fringe areas of California such as Truckee, were at least the same, if not higher. The simple fact of the matter was if Nevada's rates were too much higher than the rates in nearby states, which would also be a good argument for a cap, it might create a change in the buying patterns of fuel, especially by out-of-state drivers using Nevada highways. Mr. Capurro indicated it was not a big concern at the present time, although one of the examples used by Mr. Law in his presentation was that if Nevada had indexed the tax rate in 1935, the state rate would be 52-cents, which was considerably higher than it was at the present time. It was a factor to be concerned about for the future.

Carole Vilardo, President, Nevada Taxpayers Association, stated that when considering the issue of indexing, there was a provision in law relative to bonds that must be paid by the companies, which was based on the volume of sales. Obviously, if Nevada indexed its rate and increased the price of gas, it would produce an overall increase for those companies. Ms. Vilardo requested that the subcommittee address that issue, and stipulate that the bonds would not be raised where there had been a good payment history, otherwise, companies would suffer constant increases in bonds. It was not simply based on the amount, but rather was based on a formula that was "times" a certain amount of what was remitted. Ms. Vilardo voiced major concern in that area, while offering support to the idea of capping the rate increase. She would suggest that the cap could not exceed a 4 percent annual increase.

Chairman Leavitt stated that indexing ran the possibility of a decrease in the rate, and pointed out that bonds were issued by some jurisdictions based on the use of gasoline taxes for the payment of such bonds. Chairman Leavitt believed if the tax rate decreased, it could cause violation of those covenants, and he suggested review by John Swendseid during the drafting process to ensure the procedure would not violate bond covenants as a result of the possibility of a decrease in the rate.

Ms. Thomas stated that the current franchise fee with the sanitation company in the City of Sparks was indexed based on their particular CPI category, and also indicated a minimal rate. Ms. Thomas indicated there might be some opposition to such action, but if, in fact, John Swendseid weighed in on the bond consult question as to sufficiency of revenues to pay outstanding bonds, it would be something to think about regarding any year when the computation would result in a reduction in the tax. Ms. Thomas opined that the subcommittee should consider establishment of a minimum and a maximum.

Mr. Anderson asked Mr. Zuend to comment regarding application of the moving average, as he felt review of past years would indicate that inflation, using a five-year moving average, would never exceed 4 percent. He believed a 4 percent cap might be a justifiable item to include. In response to Mr. Anderson's question, Mr. Zuend stated that would probably hold true since 1982, and concurred that 4 percent would have easily accommodated the moving average inflation increase over the past 15 to 16 years. In the mid-1980's inflation had generally been 4 percent or under, and the only year it went above was the year of the Gulf War, when gasoline prices briefly skyrocketed. Mr. Zuend stated that since the Gulf War, inflation had been much less than 4 percent. Chairman Leavitt felt the 4 percent cap would be reasonable. Mr. Anderson concurred it would be reasonable based on the CPI.

Ms. Ritter commented that she would be in favor of both a cap and a "floor," utilizing the current level as the "floor," and not allowing the rate to drop below the current level. The 4 percent cap appeared reasonable, stated Ms. Ritter, and if there were multiple years that exceed that rate, the cap could be revisited at the Legislative level. Ms. Guinasso remarked that using the current tax rate as the "floor" would eliminate any problems with outstanding bonds. Chairman Leavitt concurred that by not allowing the rate to fall below the current level, the bond problem would be solved.

Mr. Zuend stated that in the event inflation rose over 4 percent, if the moving average was structured to use the ending date of December 2002 as the base for the five years, the rate could be structured to address years when the CPI declined, then rose the following year through averaging. Ms. Vilardo stated she would like to see the language and send drafts to members of the Taxpayers Association for review, so commercial members could actually attempt to track the rate based on the CPI. Ms. Vilardo referenced decreasing inflation, and stated she had recently checked on that issue, and found that evidently since World War I, there had not been a decrease, and an inflationary factor had existed, no matter how small the increment. It was not the decreases, but rather the increases that should be of concern. Chairman Leavitt stated his concern about the decrease surrounded the possibility of violation of the bonding covenant.

Chairman Leavitt asked Mr. Combs and Mr. Zuend to run a program based on the past 20 years to determine what the actual rate would be today on a moving average, and provide that information to subcommittee members. Chairman Leavitt called for a motion regarding indexing.

MR. SHERMAN MOVED TO RECOMMEND DRAFTING OF A BDR TO THE LEGISLATIVE COMMITTEE TO INDEX NRS CHAPTERS 365 AND 373 FUEL TAXES AS FOLLOWS:

- USING A FIVE-YEAR MOVING AVERAGE OF THE CPI;
- DMV WOULD DETERMINE THE CPI FOR THE PRECEDING CALENDAR YEAR ON OR BEFORE APRIL 1 OF EACH YEAR;
- THE RATE CHANGE WOULD TAKE EFFECT ON JULY 1.
- THE FIRST YEAR THAT THE NEW RATES WOULD TAKE EFFECT WOULD BE JULY 1, 2004;
- THE TAX RATE TOTAL WOULD ROUND TO THE NEAREST ONE-TENTH OF 1-CENT;
- THERE WOULD BE A CAP ON THE ANNUAL INCREASE OF 4 PERCENT, AND A FLOOR BASED ON THE RATES IN PLACE IMMEDIATELY BEFORE THE FIRST INCREASE;
- SHOULD INFLATION EXCEED 4 PERCENT IN ANY GIVEN YEAR OF THE MOVING AVERAGE, AND SUBSEQUENTLY DROP BELOW 4 PERCENT, THE INCREASE WOULD BE AVERAGED;
- THE EFFECT OF THE RATE CHANGES ON THE BONDS POSTED BY FUEL COMPANIES WOULD BE LIMITED, POSSIBLY STRUCTURED ON A FIXED DOLLAR

AMOUNT THAT DID NOT MOVE WITH THE RATE.

MS. THOMAS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Leavitt opened the Public Comment portion of the Agenda.

Public Comment

Mr. Capurro indicated he was concerned with future changes mandated by the Environmental Protection Agency (EPA) to change the sulfur content and other makeup of fuel, along with the major changes in power trains already mandated for 2003 and 2007 to accommodate more environmentally friendly fuels. Even more of an issue, stated Mr. Capurro, was the attempt to lessen the dependence on foreign oil. He pointed out that there was a considerable amount of money being spent on research by car manufacturers, the federal government, and entrepreneurs who were developing fuel cell technology. Mr. Capurro believed that fuel cell technology, whether it used a reformer to produce hydrogen from petroleum products, or it was hydrogen-based, were going to supplant a good portion of the surface transportation within the next 10 to 15 years. He urged the subcommittee to commence with the study of alternative fuel vehicles, because it was an ongoing issue.

Continuing, Mr. Capurro explained that the entire road system was based upon a constitutional provision in Nevada law that protects money realized from excise taxes, registration fees, and the like. When the state allowed a tax break for a certain type of fuel, or failed to create a fuel tax for the type of fuel that was being used, it damaged the state's ability to address road maintenance, development, and growth. Mr. Capurro noted that during a past Legislative Session, fuel taxes were tied to a system that measured energy produced, which was why diesel fuel with the highest energy content had the highest tax rate. The system was scaled down for other fuels, especially several named alternative fuels that by volume did not have the energy content of diesel fuel. Mr. Capurro felt it was imperative that recommendations were made to the Nevada Legislature for extension of the study of fuel tax policy and issues of technological development within the purview of the subcommittee. Those issues were coming up and ten years was not that far into the future, stated Mr. Capurro, especially when the Legislature met only every two years.

Mr. Capurro stated it was an exciting area that would assist with respect to both environmental issues as well as mobility issues. No matter the source of the fuel for vehicles in the future, the state needed to extract a tax for use of highways for those vehicles. According to Mr. Capurro, there could be no fair exemptions from that tax. An anomaly existed in present law with respect to the tax on propane, and bulk users of propane paid only 6.8-cents per gallon, as opposed to the 27-cents on diesel fuel. Mr. Capurro felt that was an area that should be addressed in an effort to make taxes comparable for everyone. The anomaly came about because of the calculation for Compressed Natural Gas (CNG), which was not a liquid fuel. Mr. Capurro felt that issues should also be addressed at some point in time.

There were a number of issues Mr. Capurro felt the subcommittee should continue to review, one of which was technological improvements which would hopefully, at some point in the future, reduce the dependency upon not just foreign oil, but also petroleum-based products.

With no further business to come before the subcommittee, Chairman Leavitt adjourned the hearing at 11:25 a.m.

Respectfully submitted,

Carol Thomsen, Interim

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Secretary

APPROVED:

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Marvin Leavitt, Chairman

DATE:__________________________