

MINUTES OF THE MARCH 23, 2022
MEETING OF THE
JOINT INTERIM STANDING COMMITTEE ON REVENUE

Chair Dina Neal called a meeting of the Joint Interim Standing Committee on Revenue (created by Assembly Bill 443) to order at 1:01 p.m. on March 23, 2022, via videoconference. Pursuant to *Nevada Revised Statutes* (NRS) 218A.820, there was no physical location for this meeting.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Chair
Senator Moises Denis
Senator Don Tatro
Assemblywoman Natha Anderson
Assemblywoman Venicia Considine
Assemblyman Gregory Hafen II
Assemblywoman Heidi Kasama
Assemblyman Steve Yeager for Vice Chair Lesley Cohen

COMMITTEE MEMBERS ABSENT:

Vice Chair Lesley Cohen

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Russell Guindon, Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division
Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division
Joe Reel, Deputy Fiscal Analyst, Fiscal Analysis Division
Anna Freeman, Committee Secretary, Fiscal Analysis Division

EXHIBITS:

[Exhibit A:](#) Meeting Packet
[Exhibit B:](#) Agenda Item VI (D) Tables and Charts

I. ROLL CALL.

Joe Reel, Deputy Fiscal Analyst, Fiscal Analysis Division, LCB called roll. All members were present except Vice Chair Cohen, who was excused. Assemblyman Hafen joined the meeting in progress.

II. OPENING REMARKS.

Chair Neal provided housekeeping remarks and a reminder of policies and procedures for virtual meetings.

III. PUBLIC COMMENT.

There was no public comment.

IV. APPROVAL OF THE MINUTES OF THE JANUARY 26, 2022, MEETING.

ASSEMBLYWOMAN ANDERSON MOVED TO APPROVE THE MINUTES OF THE JANUARY 26, 2022, MEETING.

ASSEMBLYWOMAN CONSIDINE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hafen was not present for the vote.)

V. PRESENTATION ON THE REGULATION OF THE LICENSING AND OPERATIONS OF NEVADA’S CANNABIS INDUSTRY BY THE CANNABIS COMPLIANCE BOARD (CCB) AND THE CANNABIS ADVISORY COMMISSION (CAC).

A. Structure and Function of the CCB and the CAC

B. Types and Number of Licenses

C. Assembly Bill 341 (2021 Legislative Session)

- 1. Cannabis Consumption Lounges**
- 2. Social Equity Applicant Provisions**

D. Delivery of Cannabis Products to Consumers

Agenda Items V-A, V-B, V-C, and V-D were discussed jointly.

TYLER KLIMAS (Executive Director, Cannabis Compliance Board):

Page 32 ([Exhibit A](#)) contains a timeline of Nevada’s cannabis program:

- 2000: Nevadans voted to legalize medical use.
- 2015: The first medical marijuana establishment in Nevada opened.
- 2016: Voters approved Ballot Question 2; legalizing recreational use.
- 2017: Recreational sales began in Nevada—the state’s cannabis program transitioned from the Division of Public and Behavioral Health to the Department of Taxation, creating the Marijuana Enforcement Division.
- 2019: Governor Sisolak signed Assembly Bill (A.B.) 533, creating the Nevada Cannabis Compliance Board (CCB), modeled after the Nevada Gaming Control Board (GCB).
- 2020: The state’s cannabis program transitioned from the Department of Taxation to the CCB.

The CCB mission statement drew inspiration from the GCB mission statement (page 33, [Exhibit A](#)). It details the importance of strict regulation of all areas of the industry and holding cannabis licensees to the highest ethical standards. Unlike the GCB mission statement, the CCB's mission statement also includes public health.

The CCB is comprised of five members appointed by the Governor. Currently, the CCB is chaired by former Nevada State Supreme Court Chief Justice, Michael Douglas. Also on the CCB is Dennis Neilander, the longest-serving GCB Chair in history; Jerrie Merritt, a long-time banking executive in Las Vegas; Riana Durrett, former executive director of what was formerly known as the Dispensary Association; and Dr. Bryan Young, Reno physician.

The CCB is a part-time board with responsibilities that include:

- Regular monthly public board meetings.
- Regular regulatory workshops.
- Reviewing and approving final licensures, transfers of interest, and management services agreements.
- Approving the service of disciplinary action such as complaints.
- Acting as final arbiter of discipline and giving final approval regarding subsequent settlement agreements.
- Holding emergency board meetings to consider urgent matters such as summary suspensions.

In addition to meetings, the CCB hosts regulatory workshops. A workshop concerning consumption lounges was held yesterday after the board meeting. The CCB staff includes 93 full-time positions covering operations and oversight.

The Cannabis Advisory Commission (CAC) was also created in A.B. 533 (2019 Legislative Session). The CAC is a 12-member commission, chaired by me, in my capacity as executive director. The CAC includes 8 representatives appointed by the Governor, with different expertise related to the industry, in addition to the Nevada Attorney General, Director of the Department of Public Safety, and the Executive Director of the Department of Taxation. Assemblyman Yeager is a member of the CAC. As Executive Director of the CCB and Chair of the CAC, I have the ability to appoint subcommittees when necessary. So far, I have created 4 subcommittees: public health; public safety; social equity, diversity, and inclusion; and market stability. The first 3 have met over 12 times between them. The subcommittee on market stability will likely begin meeting later this year when discussions begin concerning new licensing rounds. The CAC was

created to be similar to the Nevada Gaming Policy Commission, which meets at the direction of the Governor when there is an issue within the gaming industry that should be studied, and recommendations made. The CAC was put into practice quickly, thanks to A.B. 341 (2021 Legislative Session), which authorized consumption lounges.

Given the passage of that legislation, the advisory committee was ready to meet following the 2021 Legislative Session. That is why I created the subcommittees to start discussing, researching, and analyzing issues around public health, safety, and social equity as they pertain to consumption lounges. Toward the end of 2021, the subcommittees made their recommendations, which staff and the CCB used in the development of the first draft of consumption lounge regulations that are being workshopped now.

The Nevada Cannabis Compliance Regulations (NCCR) are the core set of regulations that guide Nevada's cannabis industry. There are currently 14 core regulations, soon to be 15 with the addition of consumption lounges. The NCCR were adopted at the CCB's inaugural meeting on July 21, 2020. There have been additions and amendments since then.

I would note that the legislation that created the CCB exempts it from the Nevada Administrative Procedure Act. This is similar to how the GCB is able to pass and promulgate regulations quickly. It has been a big benefit for the CCB to be able to stay ahead of changes in this quickly moving industry.

The CCB has four divisions: administration and licensing, inspection and audit, investigations, and enforcement. The role of the administration and licensing division is to process and review license and renewal applications, collect fees, manage the cannabis agent registration card program—with over 16,000 active cannabis agent registration cards currently—and to assist the Department of Taxation in collecting unpaid taxes from licensees. It is important for this Committee to note that when the CCB came onboard, it implemented a new process for license renewals: all outstanding taxes and any outstanding time and effort billings must be paid in order to renew. There is a great working relationship with the Department of Taxation that ensures that licensee information is available to the CCB. That policy has resulted in millions of dollars of outstanding or overdue taxes collected. It is amazing what the risk of losing a cannabis license can do to encourage someone to pay outstanding taxes.

The inspection and audit division performs audits and inspections of cannabis facilities, tracks and monitors inventory from seed to sale, and audits monthly and quarterly reports that licensees are required to submit to the CCB.

The CCB investigation division works similarly to the GCB investigation division. The CCB chief of investigations came from the GCB. The CCB investigation division reviews and processes all transfers of interest such as changes of

ownership, sales of licenses, and any new owners coming into the industry. The investigation division vets these licensees, and any affiliated owners, officers, and board members. This process includes a full suite of background checks and a financial analysis as part of the suitability review. In the past, in-person interviews were not included, but they are included in the current process. The applicants and any known associates are interviewed, resulting in a report to the CCB and the applicants must come in front of the CCB and allow the CCB to ask them questions in a public meeting.

The enforcement division evaluates all complaints made against a licensed facility—including incident reports—and partners with local and state law enforcement regarding criminal investigations, including enforcement on the illicit market.

The CCB regulates:

- Cultivation facilities where cannabis is grown.
- Production facilities where items like edibles, vape pens, and tinctures are produced.
- Testing labs—all cannabis products must be tested by a licensed independent testing laboratory before being sold in Nevada.
- Distribution facilities that transfer product to retail stores.
- Retail and dispensary facilities: licensed operations that sell to consumers.

There are 761 total medical and recreational operational licenses statewide. The lefthand column of page 41 ([Exhibit A](#)) shows licensed medical cannabis establishments, the righthand column shows licensed recreational cannabis establishments. For the most part, these facilities are dually located or co-located, meaning a facility could have both a license to cultivate medical cannabis and a license to cultivate recreational cannabis. It does not mean there are two separate brick-and-mortar facilities; they are housed in the same facility. The lefthand column gives an approximate number of facilities statewide. Lists of active licenses by county and by type start on page 53.

Page 42 ([Exhibit A](#)) describes some of the options for operations in the state. There is an option to be vertically integrated or standalone. Vertically integrated operations are licensees that own cultivation, production, distribution, and dispensary facilities. They have licenses from top to bottom. Standalone operations are licensees that own just one of those licensed facilities. Nothing prevents a vertically integrated operation from buying product from somewhere else and bringing it into its facilities. However, being vertically integrated allows total control of all inventory, from growing to selling. Standalone businesses can become

vertically integrated by buying other cannabis licensees. Likewise, a vertically integrated operation can sell its licenses, although that is not easy. There is a small market for new licenses and new facilities. It is expensive and these licenses are tied to the jurisdiction in which they originally opened. All product must go through an independent testing lab. I would also note that shared ownership is forbidden. An owner of a cultivation, production, distribution, or dispensary facility may not own any part of an independent testing lab. It is important for labs to remain impartial.

Assembly Bill 341 (2021 Legislative Session), authored by Assemblyman Yeager, authorizes the CCB to license and regulate cannabis consumption lounges. Initially, retail dispensaries may apply for and open one retail lounge per license. The CCB has received over 45 letters of intent from dispensaries planning to open lounges. There will also be 20 independent lounges, independent of a retail store, 10 of which will be designated for social equity applicants.

To apply for a retail lounge license, there is a one-time nonrefundable fee of \$100,000. To apply for an independent lounge license, there is a one-time nonrefundable fee of \$10,000. The legislation allows the CCB to reduce those fees. The CCB has proposed fee reductions for social equity applicants.

Page 44 ([Exhibit A](#)) has a timeline on consumption lounges. Assembly Bill 341 was signed in June 2021. The CAC subcommittees were created to study some of the issues around consumption lounges in July 2021 and provided recommendations at the end of 2021. The CCB held its first global workshop on the first draft of consumption lounge regulations in December 2021, including both application and licensing regulations and regulations around the operations of a consumption lounge. There was a lot of public interest and helpful feedback at the workshop in December. The CCB incorporated that feedback into a second draft, which was released in February 2022. A second workshop was held March 22, 2022.

The draft regulations are in a good place. There may be one more workshop to make some final adjustments. Once the regulations are complete, they will be put to a vote for the board to adopt. After they sit for 15 days, they will be registered regulations and the licensing process can begin. Some facilities have been planning for this, so they are more ready than others. I think some consumption lounges will open before the end of 2022 and many others will open in early 2023.

The first time the social equity program was mentioned was in A.B. 341 (2021 Legislative Session). It is an exciting prospect for the CCB and for Nevada. The bill asked for the CCB to define what a social equity applicant would be before issuing this licensing round. One reason for creating the subcommittee on social equity, inclusion, and diversity was to study and make recommendations on how to define a social equity applicant. The subcommittee has made great recommendations and the CCB has been able to conduct deeper analysis to

create the categories and qualifications one needs to be a social equity applicant. The spirit of those recommendations focused on crime rate, incarceration rate, socio-economic disadvantage, and cannabis-related offenses. Those are the qualifications needed to qualify for a social equity license. The original recommendations used zip codes as the area to determine qualification. The CCB's analysis went further to use census tracts, which allowed more specificity about which areas have been disproportionately affected by drug policy over the past decades.

Ten of the initial independent consumption lounge licenses will be designated for social equity applicants. Those applicants or their immediate family members must maintain at least 51% ownership of that license. Although this program is being developed for consumption lounges, it is the CCB's intent to extend the social equity program to future licensing rounds for all license types.

Chair Neal requested information on the delivery of cannabis products to consumers as well as the mechanics. Recreational sales facilities are limited to five ounces of cannabis or cannabis products within a single trip. Typically, when a delivery vehicle leaves a facility, it can make five deliveries. If customers order less than one ounce, the delivery vehicle can make more deliveries before returning to the facility to secure more product. Medical sales facilities are limited to ten ounces per trip. The delivery driver must hold a cannabis agent registration card and the vehicle must be inspected and approved by the CCB. Once an order is placed, the sales facility must confirm, by phone or text, that the consumer is at least 21 years old. When drivers deliver cannabis, they also scan the identification of the consumer at the point of passing the product to the consumer. Orders are paid in cash upon delivery. Delivery was offered before the pandemic, but it was not utilized much. There were only 113 vehicle inspections in 2019 (page 46, [Exhibit A](#)). There was an average of 3,000 transactions by delivery per month in Nevada before the pandemic. In 2020, there were 941 vehicle inspections. The storefronts closed down during the pandemic, but cannabis facilities were still able to make sales through delivery and, eventually, curbside. The CCB implemented a virtual vehicle inspection process during the pandemic to get more delivery vehicles on the road. There were approximately 400 deliveries in the first weekend that the retail stores closed due to the pandemic. In 2021, there were 233 vehicle inspections—more than double what it was before the pandemic started. Consumers are getting used to delivery and are still utilizing it. There is now an average of 30,000 transactions by delivery per month in Nevada.

Drive-through and curbside pickup are also important to note. Drive-through service was always allowed but was only utilized by one facility before the pandemic. Now drive-through service is utilized much more. Curbside pickup was not contemplated in the regulations. It was not utilized at all before the pandemic. The CCB put this structure and framework in place under the emergency rules and it was very successful in allowing the industry to continue to make sales and keep business going through the pandemic. The industry brought forward—and the

CCB supported—S.B. 168 (2021 Legislative Session) to put the allowance for curbside pickup into law. The NCCR have been updated to include curbside pickup regulations, and it continues to be utilized as a successful model.

ASSEMBLYWOMAN ANDERSON:

Are there staggered appointments for the CCB, or will there be a new board every four years with new appointments?

MR. KLIMAS:

They are not staggered. Three members were appointed in a temporary status to get the CCB up and running, but I believe they were reappointed to a full four-year term on July 1, 2021. I will confirm that information.

ASSEMBLYWOMAN ANDERSON:

Although there will be background knowledge, it may not be beneficial to have all new policymakers coming in at once. Is there legislative oversight of the suitability review?

DAVE STALEY (Division Chief, Investigations, CCB):

The statutes provide a general overview of things that the CCB should evaluate when determining if an applicant is suitable to receive a license. The legislation also requires that the CCB regulate the cannabis industry more like the gaming industry. The GCB has been doing this for quite some time and the CCB is able to look at its processes to give examples of best practices. In meeting the requirements of the statute, the CCB has come up with a process that mimics the GCB with background checks on all applicants, financial analysis of income statements and balance sheets from the past two years, review of compliance with regulations for the Department of Taxation and local jurisdictions, and review of how an applicant operates in other jurisdictions around the country. All that information is put together into an investigative report which is provided to the board members and, based on their collective experience and the information included in the investigative report, the CCB makes a ruling of whether to issue a license.

ASSEMBLYWOMAN ANDERSON:

There is no expiration on the registered vehicles; is there an expiration date for the license of delivery drivers?

MR. KLIMAS:

All agent registration cards must be renewed every two years, including those for delivery drivers.

ASSEMBLYMAN YEAGER:

Existing dispensaries have the ability to open a lounge, assuming all requirements are met. What percentage of current operators are eligible to apply for a consumption lounge license?

MR. KLIMAS:

There can only be one retail-attached lounge per licensee, but a lot of that depends on the ownership structure. Until the applications are submitted, the CCB will not know that structure. An analysis shows that approximately 60 licenses will be allowed statewide. The 45 letters of intent received is close to the saturation point.

ASSEMBLYMAN HAFEN:

Does the CCB oversee labor laws within cannabis facilities?

MR. KLIMAS:

No. The CCB does not oversee labor laws.

ASSEMBLYWOMAN ANDERSON:

Are labor laws considered in a suitability review?

MR. KLIMAS:

If there is a history of labor law violations—any kind of lawsuit or litigation—that certainly relates to the suitability and moral standing of an applicant. That is something Mr. Staley and his investigators would look into and include in the report.

CHAIR NEAL:

Are there set-asides within the social equity licenses? What is established in terms of diversity?

MR. KLIMAS:

Diversity and social equity are two separate things for purposes of consumption lounges and licensing. Social equity is about being disproportionately affected by

drug policy, while diversity is about getting new, diverse applicants into the industry. The CCB tried to conceptualize some set-asides apart from the social equity applicants. Looking at the ten independent lounges, perhaps 20% of those could be set aside for minority- or female-owned businesses. Some states have attempted that, and continue to get overturned. A disparity study is needed. The makeup of the industry is clear; there is a lack of diversity. A set-aside would need to be based upon the disparity study. That is where the CCB wants to go. There may be adjustments needed in the next legislative session. In the issue of set-asides, the CCB is not there yet. Again, this is separate from the social equity program that has been successful in other states and is expected to be successful in Nevada.

CHAIR NEAL:

There was case law dealing with the dormant commerce clause where there was a business activity exception when a political subdivision acted as if it were a business. This allowed a narrow pathway to deal with racial groupings. It was not specifically set-aside language. The case had not been overturned when I looked at it in 2013. Unless it has been recently overturned, it has been around for approximately 50 years. There is a nuanced piece in the dormant commerce clause around racial preferences.

SENATOR TATRO:

Are there officers currently engaged in enforcement? Have there been any issues with verification of age or resale to minors? Also, has there been any increase or decrease in the illegal market of cannabis?

MR. KLIMAS:

The CCB has four Peace Officers Standards and Training (POST) certified officers, as part of A.B. 533 (2019 Legislative Session). There will be four more beginning April 1, 2022, as a result of the consumption lounge legislation. There is growth in enforcement. With only four officers statewide currently, the footprint of enforcement is not very big. Relationships and partnerships with local law enforcement help. Regarding resale to minors: the CCB is working with the Office of the Attorney General on some programs and would like to do regular minor compliance checks. It is important, but the necessary resources are not yet available.

The CCB went to an illegal grow on March 18, 2022, to which the Las Vegas Metropolitan Police Department had served a warrant. The illegal market exists but I cannot tell you if it is growing. There is no data on the illegal market. The CCB would like to pursue that, if it is possible to obtain that kind of data. Most illegal grows are organized crime: foreign nationals across the Las Vegas Valley. It seems some of the product goes to California but then comes back. I think the

illegal market is somewhat robust. The CCB will pursue a market study later this year to get an idea of the health of the market before issuing licenses. One of the requirements in that study will be to get more detailed granular information on the illicit market. The amount being sold in the state subtracted from the amount consumed in the state should give some idea of the size of the illicit market.

SENATOR TATRO:

Has there been cooperation with local law enforcement?

MR. KLIMAS:

Yes. The partnerships with local law enforcement across the state have been beneficial on both sides.

SENATOR DENIS:

The social equity program requires 51% ownership by the applicant or immediate family member. Can that applicant or family member live out of state?

MR. KLIMAS:

Yes. After legal review of what has succeeded in other states, it was opened nationwide by census tract.

SENATOR DENIS:

Someone could live in a census tract that qualifies for social equity anywhere in the U.S. and they would qualify for a cannabis license here in Nevada, is that correct?

MR. KLIMAS:

Yes, that is correct.

CHAIR NEAL:

Please share with the Committee the research of the language found from other states.

MR. KLIMAS:

Absolutely.

Before the Department of Taxation presents on taxable sales and excise tax, I would like to highlight the other sources of revenue that the CCB brings in:

licensing and renewal fees, agent registration card fees, civil penalties, and time and effort billing. Those, along with wholesale tax revenue, fund CCB operations and disbursements to local governments, the Attorney General, the Department of Health and Human Services, and the Pupil-Centered Funding Plan. Page 50 shows those revenue sources for FY 2019, FY 2020, and FY 2021 ([Exhibit A](#)). Fiscal Year 2021 was the first full year the CCB was in operation. Licensing and renewal fees were fairly consistent. Agent registration card fees increased, but are anticipated to decrease in FY 2022 due to the two-year renewal mandate. The two largest increases are civil penalties and time and effort billing. There was a \$1 million civil penalty issued in FY 2021 that made up over half of collections, but there has been a greater focus on enforcement and compliance in the industry. That is not a metric of success. A larger amount from civil penalties is not a good sign as it means more people are out of compliance, but it is representative of the greater emphasis that has been placed on coming into compliance. The cannabis industry was always supposed to be self-funded. That is how the ballot question was listed. It is how medical marijuana operates. Time and effort have always been charged. Since the CCB took charge, there has been an emphasis on ensuring that operations are billed appropriately for time and effort.

Page 51 ([Exhibit A](#)) shows items to which the CCB is looking ahead:

- Federal action and legalization—banking changes have passed the House but have not passed the Senate, it has been folded into defense authorization bills and then removed. There could be banking legislation passed by itself, or there could be full rescheduling, descheduling, or full legalization.
- Enforcement of the illicit market and identifying its impact on lost tax revenue.
- Addressing Delta-8 and other synthetic cannabinoids: there have been issues with the farm bill and hemp legalization allowing the utilization of hemp in psychoactive products available to consumers of all ages. There were some advancements made in the 2021 Legislative Session in protecting against those products, and there will be more movement in that area as well.
- Impact of consumption lounges once operational—both on the industry and on tax revenue for the state.
- Market stability study to determine future licensing rounds.

SENATOR DENIS:

Is there a better ability to enforce the illicit market now than there was before the legalization of cannabis in Nevada?

MR. KLIMAS:

A lot of enforcement is left to local law enforcement, and I do not want to speak for them. I think a lot has to do with lack of prosecution as cannabis has become legal. I do not know if legalization has eliminated some of the opportunities to pursue some of the illicit market issues all the way to the end. The evolving process has changed the way with which the illicit market is dealt.

ASSEMBLYWOMAN ANDERSON:

Are the licensure and renewal fees a set amount, or was inflation taken into account?

MR. KLIMAS:

The initial application and renewal fees are set in statute. An adjustment could be made through the legislative process.

BRYAN FERNLEY:

The Legal Division can confirm that the period of the initiative petition enacting the statute regulating marijuana has passed. The fees can be adjusted through legislation.

RUSSELL GUINDON (Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

The 14-page report that begins on page 54 ([Exhibit A](#)) is information that the CCB provides on its website. The summary table is on page 53.

There was no further discussion on this item.

VI. PRESENTATION ON THE TAXATION OF NEVADA'S CANNABIS INDUSTRY.

A. 15% Wholesale Tax on the Sale of Cannabis by a Cannabis Cultivation Facility

1. Fair Market Value at Wholesale Determination

B. 10% Retail Tax on the Sale of Cannabis or Cannabis Products by an Adult-Use Cannabis Retail Store

C. Sales and Use Tax on Retail Sales of Cannabis or Cannabis Products

D. Historical Actual Collections from the 15% Wholesale Excise Tax and the 10% Retail Excise Tax

Agenda Items VI-A, VI-B, VI-C, and VI-D were discussed jointly.

MELISSA FLATLEY (Chief Deputy Executive Director, Department of Taxation):

There have been frequent changes to the tax structure since S.B. 374 (2013 Legislative Session) implemented the 2-2-2 system, which imposed a 2% excise tax at each sale of medical marijuana, whether by cultivator, a facility that manufactured marijuana-infused products, or sale to the consumer.

When Question 2 was passed, it imposed a 15% excise tax on sales of recreational marijuana by cultivation facilities. It did not change the excise taxes on medical marijuana, so it created these two separate systems of marijuana based on whether it was taxed as medical marijuana or recreational marijuana.

This was addressed when S.B. 487 (2017 Legislative Session) modified the tax structure by increasing the excise tax rate on wholesale sales of marijuana for medical use by a cultivation facility to 15% from 2%, abolishing the 2% tax on sales to facilities that produced marijuana-infused products, and imposing a 10% tax on retail sales of marijuana.

Sales of cannabis are now subject to sales tax based on the state rate as well as the local rate. Each retailer of cannabis must file a monthly sales tax return that includes both the sales for adult-use and the sales to patient cardholders, and the required sales tax payment. *Nevada Revised Statutes* 372A.290 imposes an excise tax on certain wholesale and retail sales of cannabis.

The Wholesale Marijuana Tax (WMT) is imposed at a rate of 15% of the fair market value at wholesale for wholesale sales of cannabis by a medical or adult-use cannabis cultivation facility to another cannabis establishment. In 2021, S.B. 278 exempted transfers by cultivation facilities that transfer cannabis to another cannabis cultivation facility with identical ownership. They are required to file a supplemental return providing details of such transfers, but those transfers are not subject to the WMT.

For each retail sale of cannabis or cannabis products by an adult-use cannabis retail store—and soon this will include a cannabis consumption lounge—an excise tax is imposed at the rate of 10% of the sales price of the cannabis or cannabis products; this is the Retail Marijuana Tax (RMT).

There are a couple exemptions from RMT:

- Medical cannabis is exempt from the 10% RMT.
- If a retail store has an agreement with an independent cannabis lounge and sells cannabis or cannabis products to the lounge, these sales must be reported to the Department of Taxation but will be exempt from RMT. The independent cannabis lounge will be responsible for the payment of the RMT.

SHELLIE HUGHES (Executive Director, Department of Taxation):

In 2016, with the passage of Question 2, a 15% wholesale excise tax on the fair market value at wholesale of cannabis was created. The initiative petition also gave the department the authority to adopt regulations regarding the procedures to establish the fair market value at wholesale of cannabis.

Nevada Administrative Code 453D.045 defines fair market value as the value established by the department based on the price that a buyer would pay to a seller in an arm's-length transaction for cannabis in the wholesale market.

The department calculates the fair market value by looking at the raw data of nine categories from wholesale transfers reported in the seed-to-sale tracking system, marijuana enforcement tracking reporting compliance (METRC), for a six-month period. The most recent data came from transfers on April 1, 2021, through September 30, 2021.

The nine categories of cannabis that the department looks at are:

- Small or popcorn bud, reported in pounds
- Cannabis flowers or bud, reported in pounds
- Cannabis leaves/trim or shake, reported in pounds
- Immature (not flowering) cannabis plants, reported in units
- Wet whole plants, reported in pounds
- Seeds, reported in units
- Pre-rolled cannabis cigarettes (joints), reported in units
- Unsalable flower approved for extraction, reported in pounds
- Unsalable trim approved for extraction, reported in pounds

After the department pulls the data from METRC, transfers that are not considered arm's-length transactions are removed. Those transfers include:

- Internal transfers from vertically integrated companies.
- Transfers that are exempt from the wholesale tax, including tribal cultivation, production, or dispensary transfers.
- Any transfers that include keywords such as samples, displays, internal, promotions, testers, or trials.

The department must also take the data and manually calculate the prices per pound or per unit so that the prices are standardized. The department removes any records with standardized prices less than 15% or more than 500% from the previous fair market value (FMV) determination, as these are considered outliers. The department then takes the remaining data transfers and determines the median sales price for each category. The median sales price becomes the

FMV, and the 15% WMT is then imposed on the FMV at wholesale of cannabis for each category.

A document is drafted with the department's determination of the FMV, and the WMT return is revised to include the new FMVs. Both forms are posted to the department's website.

The most recent determination is from the most recent FMV calculation, which began on January 1, 2022. The next determination of FMV at wholesale rates will take effect July 1, 2022, and will be based on wholesale transfers made between October 1, 2021, through March 31, 2022.

That brings up a question about which trends the data reveals. Analyzing the most recent data, the department has made the following observations:

- After generally declining for several years, the prices of the two largest product categories—small bud and flower—have begun to rise over the past year.
- The FMV for the trim category has barely changed since the July 2021 determination, while the FMVs for immature plants, seeds, and pre-rolls did not change.
- The wet whole plant category increased from July 2021, but is still below January 2021 levels.
- The prices for flower and trim approved for extraction also increased somewhat from July 2021, but remain below 2020 price levels.

The department has every FMV determination posted on its website, if anyone would like to observe the trends from July 1, 2017, to the present.

The last item on page 73 is pending regulations ([Exhibit A](#)). The department currently has a pending regulation LCB File No. R108-20 that contains provisions to set forth the method of calculating the FMV at wholesale of cannabis. These provisions are similar to the method that was previously adopted by the department in the context of adult-use cannabis in *Nevada Administrative Code* (NAC) 453D.236. With the enactment of A.B. 533 (2019 Legislative Session), the department retained the authority to calculate the FMV at wholesale. As a result, the department had to pursue rulemaking to transfer the language from NAC 453D.236 to NAC 372A, which is the chapter that contains provisions regarding cannabis excise taxes.

This regulation was adopted by the Nevada Tax Commission on March 7, 2022, and will be heard at the next Legislative Commission meeting.

The department's role regarding consumption lounges is to collect the Retail Marijuana Tax (RMT) on any cannabis or cannabis product retail sale and to collect any sales tax associated with those sales, as well as to collect the sales tax on sales of other tangible personal property made by a cannabis consumption lounge. Assembly Bill 341 (2021 Legislative Session) contains several sections that pertain to the collection of taxes by a cannabis consumption lounge.

Section 25 of A.B. 341 (2021 Legislative Session) provides that a retail cannabis consumption lounge can obtain from the adult-use retail store to which it is attached, single use cannabis products for purposes of resale, and cannabis or cannabis products for the purposes of producing ready-to-consume cannabis products. When reselling to consumers, the lounge must pay the RMT as well as the sales tax. The lounge will need to register with the department for a sales tax permit.

Section 27 of the bill allows an independent cannabis consumption lounge to enter into a contract with one or more adult-use cannabis retail stores to sell to the independent consumption lounge single-use cannabis products for purposes of resale and cannabis or cannabis products for the purposes of producing ready-to-consume cannabis products. When reselling to consumers, the lounge must pay the RMT as well as the sales tax. The lounge must register with the department for a sales tax permit.

Section 31 of A.B. 341 (2021 Legislative Session) adds a cannabis consumption lounge as a taxpayer in NRS Chapter 372A and requires the lounge to remit the 10% excise tax to the department.

The department is currently working on a regulation which amends NAC 372A to add language related to a cannabis consumption lounge's obligation of the payment of tax and provides the procedure for consumption lounges to collect and remit the excise tax on retail sales. This regulation is in the early stages of the rulemaking process— language is currently being drafted and reviewed.

MS. FLATLEY:

Taxpayer payments are due monthly, and a return is required even when there is no tax due. The department accepts cash payments for WMT and RMT but taxpayers must make an appointment. On average, combining the northern and southern offices, the department has approximately 170 appointments each quarter to accept cash payments.

After payments are received, they are distributed in accordance with NRS 372A.290, first to the CCB and then to local governments in an amount determined by the CCB to be necessary to pay the costs of the CCB and the local governments in carrying out the provisions of NRS Chapters 678C and 678D. Up to \$5 million is distributed to all local governments.

As of July 1, 2021, any remaining funds are deposited to the State Education Fund. There is an error on page 75 ([Exhibit A](#)): prior versions of NRS 372A.290 sent excess funds to the State Distributive School Account, but they are now deposited into the State Education Fund.

RUSSELL GUINDON (Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

These tables and charts are in a separate document ([Exhibit B](#)). Monthly collections of the 15% WMT and the 10% RMT are reported on the Department of Taxation website. Table 1 on page 1 shows monthly collection data for FY 2018 through FY 2021 while page 2 shows the collections by fiscal year. The 15% WMT applies to both medical and recreational use. The 10% RMT applies only to recreational use.

Although this industry has been maturing over the past several years, it is still a new industry. Additional licensees, demand from local and visiting customers, and the COVID-19 pandemic could all be factors driving revenue growth. In FY 2021—during the pandemic—the 15% WMT generated approximately \$65.6 million and the 10% RMT generated approximately \$92.1 million. The WMT funds CCB operations, and any additional funds go toward K-12 education. When the RMT was put in place in 2017, for the first two years the proceeds went to the state Rainy Day Fund, then they were dedicated to the State Distributive School Account, and those proceeds now go to the State Education Fund.

Table 2 shows the 15% wholesale cannabis excise tax collections for Clark County, Washoe County, and all other counties. It is currently reported this way by the Department of Taxation, and there are notes explaining why at the bottom of the table. Although there are licensed cultivation licensees in smaller counties, the department may not disclose individual taxpayer information or report the numbers in a way that would allow one to potentially infer someone else's results because they know their own results. Because of the smaller number of licenses in these counties, they are rolled into this All Other Counties category.

Table 3 shows the 10% retail cannabis excise tax collections in those same categories for the same reason.

Charts 1A through 1D show the 15% WMT and the 10% RMT for statewide, Clark, Washoe, and all other counties. These graphs display the data from the tables. As the product moves from cultivation to retail, there are markups. Although the RMT is a lower tax rate, the retail price is higher than the wholesale. The 10% tax on retail sales therefore brings in more revenue than the 15% tax on wholesale prices. The timing of cultivation and harvesting affects when the taxes are due at the wholesale level, so there are times when the WMT brings in more revenue than the RMT.

The chart displaying all other counties is especially interesting (page 10, [Exhibit B](#)). There are counties that have cultivation but do not have retail, or vice versa, making it difficult to interpret this chart.

Chart 2 shows the 15% WMT statewide alongside the three market categories. Chart 3 shows the 10% RMT statewide alongside the three market categories

ASSEMBLYMAN YEAGER:

In the All Other Counties category, there was a large spike of the 10% retail excise tax in May 2020 and of the 15% wholesale in January 2021. Is there an explanation for this?

Ms. HUGHES:

I am unsure what caused those spikes. Differences can result from amended returns or audit findings. One taxpayer may have failed to report sales in one quarter and then reported all their sales in the next quarter. It is hard to tell.

ASSEMBLYMAN YEAGER:

On the chart of FMV for various types of products, there are large differences between the maximum and minimum prices (page 78, [Exhibit A](#)). Does this reflect only the price of arm's-length transactions?

Ms. HUGHES:

The department economist provides this chart every time this information is released. I believe that the exclusions are removed before this chart is put together.

ASSEMBLYMAN YEAGER:

Why is there such a large spread between the maximum and minimum prices, particularly on small bud and flower? Perhaps the demand was high at some point when supply was low or perhaps there is there a higher demand for what is perceived to be a higher quality product.

Ms. HUGHES:

The department will provide the Committee with that information.

ASSEMBLYMAN HAFEN:

What percentage of the wholesale market is vertically integrated?

MS. HUGHES:

There are more and more vertically integrated businesses, which makes the FMV harder to calculate. Those transactions are not considered arm's-length transactions, so they are removed from the data set.

TYLER KLIMAS (Executive Director, CCB):

The data of the percentage of cultivation facilities that are part of a vertically integrated operation could likely be pulled, but we do not have that information today. Some of the discrepancy in price for flower and small bud may also be due to failed testing. The failed product may not be sold in its current state, but may be sold to a production facility that would then create distillates, killing any bacteria or pesticide on the product.

ASSEMBLYMAN HAFEN:

How are county taxes collected when a product is shipped between counties?

MS. HUGHES:

The Department of Taxation only collects state taxes. I am unsure how counties impose taxes on transfers.

MR. GUINDON:

In 2017, the Legislature gave local governments the authority to impose up to a 3% tax on the gross revenue at the cultivation level, up to 3% at the production level, and up to 3% at the retail level. Fiscal staff is researching this. The local taxes are based on gross revenue, whereas the WMT is based on the FMV set by the Department of Taxation, not the actual sales price. It would come down to the gross revenue for the tax reporting period that the entity generated, possibly independent of whether product was sold across county lines. The local tax is based on gross revenue, so it would be subject to taxation in the county in which the facility is operating and generating the revenue.

ASSEMBLYMAN HAFEN:

There is a lot of cultivation in Nye County that is transported to Clark County, where most of the consumption is. Will a facility be required to calculate the gross revenue of FMV when there is not an actual transfer of product due to vertical integration? I realize there may not be an answer today, but I would like more information on that.

MR. GUINDON:

The Fiscal Analysis Division has started that research. The ordinances being put in place by local governments have different structures, so it is unclear whether they are collecting on transfers versus sales. There is one entity with an ordinance tied to the FMV calculation. Every six months, the FMV determination is calculated. Fiscal staff is working with the Department of Taxation to compile that data, and that can be provided to the Committee at a later date. This is a unique tax because it is not attached to the sales price; there must be the intermediate calculation of the FMV, using historical information to determine the tax rate.

Nevada has this structure for the WMT because it came out of the ballot question. It was mandated for three years, which have now passed. The Legislature can now make modifications to the tax structure. Colorado uses this structure. Because Colorado had a marijuana market in place and operating at the time, the drafters of the petition that brought forth the ballot question chose to model Nevada's structure after Colorado's.

Regarding the spikes that Assemblyman Yeager asked about: Clark and Washoe Counties are the larger influencers; the All Other Counties category is a much smaller set of licensees. A licensee joining the market could cause a spike in the All Other Counties category. A one-time spike could also be a licensee paying back taxes, as Mr. Klimas mentioned.

SENATOR TATRO:

Does the All Other Counties category include tribal land? Do native tribes report in a similar fashion?

MS. HUGHES:

The Department of Taxation does not collect tax revenue from the tribes, but has agreements or compacts. The tribes are required to impose the same tax rate that the state imposes or higher, but they collect and retain tribal tax for sales that occur on tribal land.

CHAIR NEAL:

It does not matter where the customer resides, if a cannabis product is purchased on tribal land, all taxes collected on that sale are retained by the tribe, correct?

MS. HUGHES:

Correct. The sale occurs where the transfer of the product occurs.

CHAIR NEAL:

Will tribes have consumption lounges as well?

ASSEMBLYMAN YEAGER:

The tribal governments are not expressly included in the consumption lounge bill because there was already at least one consumption lounge in operation on tribal land previously. The tribal sovereignty allows the tribe to do as it wishes on tribal land. I do not know if the compacts touch on that, or if they will touch on that at some point. Assembly Bill 341 (2021 Legislative Session) only dealt with state regulation under the CCB.

CHAIR NEAL:

I would like to know more about the processes of how local jurisdictions report to the Department of Taxation. Local jurisdictions typically have a line item in their budget for the “up to 3%.” I would also like to know the appropriation of that tax. During research and discussions with the local jurisdictions, please inquire about the collection and appropriation of these funds. Local jurisdictions come to the Legislature to request funds when they cannot afford to pay for services. It would be informative for the 2023 Legislative Session to know where the cannabis revenue has been spent at the local level.

MR. GUINDON:

There is no interaction between the Department of Taxation and the local governments pertaining to the “up to 3%.” It is essentially a license fee that local governments may choose to impose on any or all of the levels of the cannabis industry. I do not believe there are any restrictions on use for that revenue; it could be put into the local general fund or earmarked for specific things. Fiscal staff will reach out to the local governments that are imposing these taxes to find out where the revenue is being used.

CHAIR NEAL:

Regarding consumption lounges: a cannabis product being used within a consumption lounge is taxed. The vape tax deals with components of a tangible product that is used or created. Does the cannabis tax mimic the vape tax?

MS. HUGHES:

The RMT is only on cannabis and cannabis products, it would not tax accessories, which is only subject to sales tax. The cannabis consumption lounge will be responsible both for the RMT and the sales tax on tangible personal property (TPP).

There was no further discussion on this item.

VII. PRESENTATION ON NEVADA'S SALES AND USE TAX RATES AND DISTRIBUTION OR PURPOSE OF THE PROCEEDS BY COUNTY BY STATUTORY AUTHORITY.

MICHAEL NAKAMOTO (Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

Table 1 for this agenda item is on page 79 ([Exhibit A](#)). This is a general view of Nevada sales tax. The first column is the area where the rate is imposed. All of the optional rates are county rates, there are no rates imposed by cities here. They are all either statewide or county rates. The statutory authority is either the NRS or the *Statutes of Nevada*. The date a rate was first imposed does not necessarily reflect the current rate but the first time a rate under this authority was imposed, either at the state or the local level, by that authority. The last column shows the actual collections from that particular component of the rate for FY 2021.

The State General Fund rate is set at 2%. Mr. Fernley talked about the Sales and Use Tax Act of 1955 at the last meeting—the authority under which this rate is imposed. It was originally put into place under S.B. 171 (1955 Legislative Session).

The Basic City-County Relief Tax (BCCRT) at 0.5% and the Supplemental City-County Relief Tax (SCCRT) at 1.75% have been imposed in Nevada since July 1, 1981. Assembly Bill 368 (1981 Legislative Session) imposed these mandatory taxes in all 17 counties. Under current law, there is a 1.75% commission retained for the State General Fund to pay for the cost of the Department of Taxation collecting and administering the tax. The remainder of the revenue goes to the local government tax distribution account for distribution to cities, counties, and enterprise districts under the consolidated tax distribution (CTX), noted next to the name of the tax on the chart.

The Local School Support Tax (LSST) has been imposed in Nevada since July 1, 1967. It is currently imposed at a rate of 2.6%, with the proceeds going to the State Education Fund for K-12 education. This is an instance where the date the rate was first imposed matters. The original provisions that put the LSST in place—S.B. 15 (1967 Legislative Session)—put it in place at a rate of 1%. The Legislature has increased that rate on several occasions—mostly recently in the 2009 Legislative Session, when it was raised to the current rate of 2.6%.

The combined statewide rate is 6.85%. That is the base rate in all 17 counties. There are many counties that have their own option rates, authorized under statute or by local acts approved by the Legislature that allow 1 or more counties to impose a rate. There are four local option rates imposed in Carson City and there are three in Churchill County.

I will highlight the six option rates that are imposed in Clark County because that is where the bulk of taxable sales are. The first is for flood control, imposed at a rate of 0.25%,

pursuant to NRS 543.600. This was put into place pursuant to A.B. 169 (1985 Legislative Session), which allows a county with a population of 700,000 or more to impose a rate of up to 0.25% for a flood control district. The proceeds from this rate go to the Clark County Regional Flood Control District. A rate of 0.5% is imposed for mass transit and air quality, pursuant to NRS 377A.020. That section of the NRS has four different reasons why a county may impose a particular rate for a particular purpose. Clark County is imposing the maximum 0.5% rate allowed under statute. The mass transit portion goes to the Regional Transportation Commission of Southern Nevada and the air quality portion is retained by Clark County for use by its Division of Air Quality.

The Southern Nevada Water Authority has a rate of 0.25%, pursuant to NRS 377B.100, which allows any county to impose a rate for certain infrastructure purposes. The maximum rate allowed in most counties is 0.25%. The next two are for police support. The Clark County Sales and Use Tax Act of 2005 is colloquially referred to as “More Cops.” This is imposed at a rate of 0.3%. The second is the rate of 0.1% imposed under the Clark County Crime Prevention Act of 2016 in A.B. 1 (30th Special Session, 2016). This was the special session where the Legislature considered and approved the project that is now known as Allegiant Stadium. The last rate for Clark County is listed as education programs. The Legislature, in A.B. 309 (2019 Legislative Session), gave any county the authority to impose a rate of 0.25% for a number of purposes outlined in that bill. The Clark County Commission approved an ordinance based on that authority at a rate of 0.125% and that rate took effect on January 1, 2020. Combining those brings Clark County’s total rate to 8.375%.

Douglas, Elko, Lander, Lincoln, and Lyon Counties all have their own rates under the infrastructure section, NRS 377B. Nye County has two, Pershing County has one, Storey County has three, and Washoe County has five (page 81, [Exhibit A](#)). Washoe County has an NRS 377B rate listed for flood control and public safety. I mentioned that counties have authority to impose a rate under this section of the NRS at a rate of 0.25%. Washoe County is the exception, with authority to impose a rate of up to 0.125%. Washoe County is imposing the maximum rate. The Local Government Tax Act of 1991 was A.B. 104 (1991 Legislative Session), which gave certain counties the ability to impose a sales tax rate of 0.25%. There was legislation in the following legislative session that removed the authority for many of the counties to impose a rate under that act. Washoe County—and I believe Churchill County—retained the ability to impose that rate. Washoe County is still imposing that rate.

The next rate is for mass transit at 0.375%, pursuant to NRS 377A.020, that goes to the Regional Transportation Commission of Washoe County. A special act from 1997 for the ReTRAC train trench project put a rate of 0.125% into effect in April 1999. A rate of 0.54% is imposed for capital projects for the school district that came out of legislation approved during the 2015 Legislative Session authorizing the placement of a ballot question for the imposition of one or more taxes. The committee formed as a result of that legislation chose to place a question on the ballot in 2016, imposing a rate of 0.54% for sales tax, which was approved by voters. That rate took effect on April 1, 2017.

White Pine County has four rates. I would highlight the rate for school capital improvements, pursuant to NRS 377A.010, which gives certain counties the ability to impose an additional sales and use tax rate for capital improvements for their school district as long as they have met other conditions. White Pine County is the only county currently imposing this rate.

The next few pages are notes for the table. They explain the history behind the rates, statutory citations, and so on. Table 2 puts all that information into individual rates by county as well as the total rate (Page 85, [Exhibit A](#)).

The first four columns apply to all counties:

- The State General Fund 2% rate.
- The 0.5% BCCRT and the 1.75% SCCRT, which go to the consolidated tax distribution.
- The LSST, which goes to the State Education Fund.

The remaining columns show all the local option rates:

- NRS 374A is the school capital improvement rate only imposed in White Pine County.
- There are seven counties imposing rates under NRS 377A.
- Eleven counties are imposing rates under NRS 377B for infrastructure.
- NRS 377D is the rate that was authorized by the Legislature in 2019 for various purposes—Clark County is the only county imposing that rate at 0.125%.
- NRS 543 is the flood control rate for which, in statute, authority is only given to a county with a population of 700,000 or more—Clark County is the only county here.
- The special acts or voter approved column is when the Legislature passes a special act that allows one or more counties to impose a rate—seven counties currently impose these.
- The total rate for each county.

Thirteen counties have a rate that is higher than the statewide mandated rate of 6.85%. Esmeralda, Eureka, Humboldt, and Mineral Counties are the only counties not imposing a local option.

Page 86 ([Exhibit A](#)) shows the information from Table 2 in a chart. Table 3 on page 87 has a list of local sales and use tax rates that are authorized or codified under current law but are not currently imposed. In the first two cases, voters must approve the rates; no county has ever imposed either of these rates. Any county with a population under 700,000 has the authority to impose this rate until September 30, 2029. The authority for all counties, except a county whose population is between 100,000 and 700,000, expires

October 1, 2029. Effective on that date, only Washoe County may impose this rate. Currently, none of the 16 counties that could impose this rate are imposing it.

Legislation approved in the 2013 Legislative Session created NRS 377C.100, giving authority to a county with a population between 100,000 and 700,000—in other words, Washoe County—to impose a rate of up to 0.25% for school district capital projects as long as the ordinance imposing the rate was adopted by the board of county commissioners by January 1, 2014, and was approved by a two-thirds majority vote, which did not occur. The statutory citation, NRS 377C.100 exists, but at this point, no county can impose this rate, because no county met the criteria within that section.

The last rate is the Elko County Hospital Tax Act of 1997. The Elko County Board of County Commissioners could enact an ordinance imposing a rate of up to 1% for the construction of a county hospital with voter approval. The county commission submitted a question to the voters at a special election in 1998 but the question failed, and the tax was never imposed. The authority for Elko County to impose this rate exists but voter approval is needed.

CHAIR NEAL:

This table is helpful in committees when discussing needed funding, to keep in mind where money is already allocated. This can help frame questions in a different way when agencies request funding. There should be a big picture of revenue streams and services. Seeing these tax calculations provides a deeper insight into local revenue option taxes that are used and what services are being provided through that funding.

ASSEMBLYMAN YEAGER:

Is there a rundown available of local jurisdictions that have tried to enact local taxes by putting it to a vote and failed? Sometimes the Legislature is asked to fund things at the state level when the ability to fund it at the local level exists, but local voters do not want it.

MR. NAKAMOTO:

That is not something that has been compiled. I do not think the Fiscal Division has a comprehensive list of ballot questions with tax implications; however, Fiscal staff could have a conversation with the Research Library or the Office of the Secretary of State, as they keep a history of ballot questions both at the state and local levels.

There was no further discussion on this agenda item.

VIII. PRESENTATION ON NEVADA'S LIQUOR TAX RATES AND GALLONS OF LIQUOR.

A. Tax Rates and Distribution or Purpose of the Proceeds

B. Historical Actual Gallons by Fiscal Year by Type of Liquor Tax Category

Agenda Items VIII-A and VIII-B were discussed jointly.

MICHAEL NAKAMOTO (Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

The overview of liquor tax rates imposed under current law in Nevada is on page 89 of the meeting packet ([Exhibit A](#)). All liquor taxes imposed under NRS 369 are statewide rates. The bulk of state liquor tax goes to the State General Fund. The Department of Taxation does not report the collections by liquor type, but it is aggregated and reported as a total. The rate depends on the type of liquor and is all controlled by NRS 369.330, based on rates that were first put into place on July 1, 1945. Total collections in FY 2021 were approximately \$43.5 million.

The malt beverages category of subsection 4 of NRS 369.330 is referred to as beer. That is currently taxed at a rate of \$0.16 per gallon. Liquor containing more than 0.5%, up to and including 14% alcohol by volume (ABV), is taxed at a rate of \$0.70 per wine gallon or proportionate part thereof. This is under subsection 3 of NRS 369.330. Liquor containing more than 14%, up to and including 22% ABV, is referred to as cordials and is taxed at a rate of \$1.30 per wine gallon or proportionate part thereof, pursuant to subsection 2 of NRS 369.330. Liquor containing more than 22% ABV is referred to as hard liquor.

There are three separate rates for hard liquor with a total of \$3.60 per wine gallon or proportionate part thereof:

- \$2.95 per wine gallon or proportionate part thereof to the General Fund.
- \$0.50 per wine gallon or proportionate part thereof to the Local Government Tax Distribution Account—cities, counties, and other districts get a cut of liquor tax revenue from this category.
- \$0.15 per wine gallon or proportionate part thereof to the Tax on Liquor Program Account, for the Division of Public and Behavioral Health (DPBH) to fund alcohol treatment programs.

Pages 90 and 91 have notes on the overview and history of the liquor tax ([Exhibit A](#)). Page 92 shows the total rate by liquor type and page 93 shows the information as a graph. Again, the only category affected by multiple components is the hard liquor category on the far right.

Table 3 (page 94, [Exhibit A](#)) takes all the tax rate changes that have happened in this per gallon structure for liquor since this tax was put into place. This information is contained in the notes for Table 1, but here it is pulled out to better show the evolution of this tax. The current system of how liquor is taxed in Nevada was created in A.B. 178 (1945 Legislative Session). All proceeds originally went to the General Fund. Malt beverages were originally taxed at a rate of \$0.03 per gallon. The wine category up to 14% was originally taxed at a rate of \$0.15 per gallon. Originally, when this \$0.15 per gallon tax was put into place, it only applied to liquor between 8% and 14% ABV. Cordials, 14% to 22% ABV, were originally taxed at a rate of \$0.25. Hard liquor over 22% was taxed at a rate of \$0.60.

Assembly Bill 151 (1947 Legislative Session) changed the wine category from applying only to 8% to 14% ABV to include 0.5% to 14% ABV. The rates increased for the first time through S.B. 201 (1961 Legislative Session). In three of the four cases, the rates doubled. Malt beverages, or beer, increased from \$0.03 to \$0.06; wine increased from \$0.15 to \$0.30; and cordials increased from \$0.25 to \$0.50. Hard liquor more than doubled, going from \$0.60 to \$1.40. Senate Bill 439 (1969 Legislative Session) created the \$0.50 per gallon tax rate for local governments that is still in effect today—that rate has never changed but the distribution has changed. The distribution of this portion to a county and the cities within the county depended on how many incorporated cities were within the county. In a county with no incorporated cities—which includes Carson City—the county, or Carson City, received all of the proceeds. In a county with one incorporated city, the proceeds were divided between the city and the county based on their share of the population. In a county with two or more cities, the cities shared the revenue and the county received none. This is how the distribution of this tax worked until the CTX was put into place in the 1997 Legislative Session.

The next change was A.B. 247 (1981 Legislative Session), which increased the hard liquor rate from \$1.90 to \$2.05 by adding the \$0.15 to what was known as the Alcohol and Drug Abuse Account and is now known as the Tax on Liquor Program Account.

The next change to the rates for all categories other than hard liquor occurred during the 1983 Legislative Session where malt beverages increased from \$0.06 to \$0.09, wine increased from \$0.30 to \$0.40, and cordials increased from \$0.50 to \$0.75. Those rates remained in place until S.B. 8 (20th Special Session, 2003) put the current rates in place.

I would point out that these shifts in the tax rates have occurred four times: the first took 16 years, from 1945 to 1961; the next took 22 years, from 1961 to 1983; and the third took 20 years, from 1983 to 2003, to reach today's rates.

Table 4 shows the only liquor tax rate that is codified under current law but is not currently authorized or imposed (page 95, [Exhibit A](#)). Pursuant to NRS 369.333,

any liquor containing more than 22% ABV imported into the state after July 1, 1965, has an additional tax of \$1.50 per wine gallon that will be imposed only if the federal gallonage tax imposed by Section 5001 of Title 26 of the *United States Code* is reduced to \$9.00 per wine gallon. The story behind that is largely in the included notes. The federal government did not reduce that rate. In fact, since then, the rate has only increased. Therefore, the statutory authority for this rate exists but the rate has never been imposed. Barring a drastic reduction to the federal rate, it will not be imposed.

Page 97 has similar information to what Mr. Guindon put together on cannabis tax collections ([Exhibit A](#)). Because liquor tax has been imposed for far longer, information here has been put together by fiscal year. The total liquor tax, changes in rates, and information on the effective tax rate per gallon are all included. The collections and the effective rate per gallon drastically increased in 2004 as a result of the tax changes approved in the 20th Special Session in July 2003. In FY 2021, the General Fund portion is approximately 90% of the total. The last column shows the total gallons of all liquor types taxed in the state.

Table 2 breaks those total gallons out by type and how each has changed over time. Beer is the predominant liquor imported, making up more than three quarters of the gallons, but that number is declining. It was approximately 84% in the 1990s but has now dropped to approximately 79%. Wine is the second largest category. Compared to beer, it is considerably smaller, but it is increasing. It is unclear if any of the decreases in the last couple of years are pandemic related. Cordials is the smallest by far, making up approximately 2%, increasing from less than 1% in the 1990s. Hard liquor is at approximately 8%, just over where it was in FY 1990.

The Department of Taxation does not break out collections by liquor type. Table 3 basically takes the gallons and applies the tax rates applicable to each category to impute the total amount of taxes due. This does not match the actual total. The actual totals reported by the Department of Taxation include penalties, interest, and prior period collection that are not included here. There is also a taxpayer collection allowance that the taxpayer is allowed to keep as long as they pay their taxes time. For a long time, the taxpayer collection allowance was at a rate of 3% but it was reduced to the current rate of 0.5% during the 20th Special Session (2003), which is not accounted for here.

Even though beer makes up approximately 80% or more of the gallons, it makes approximately 24% of revenue collections. Hard liquor, although only 8% of the gallons, makes up more than half of collections based on this imputed calculation. That is a function of the rates being so different: \$0.16 for beer versus \$3.60 for hard liquor.

Page 100 shows gallons by type. Page 101 shows each category as a share of total gallons ([Exhibit A](#)). Page 102 shows the actual gallons indexed to FY 1990. Because cordials represent such a small amount, the growth looks large. Page 103 shows the gallons times the tax rate to determine the imputed taxes due. There is a jump from FY 2003 to FY 2004 because of the rate increase approved during the 20th Special Session. Page 104 shows the share of total imputed taxes due by type of liquor tax category. These mirror the actual collections in some sense: the predominant amount of collections come from liquor, followed by beer, then wine, and then cordials at the bottom of the chart growing to approximately 5%. Page 105 shows the imputed taxes due indexed to FY 1990. Again, the big jump was due to the tax increases. Page 106 shows the share of total actual gallons and the share of total imputed taxes due. This takes some information from the previous charts and puts it together.

ASSEMBLYWOMAN ANDERSON:

Are the categories of liquor and the measurement in gallons standardized across the nation?

MR. NAKAMOTO:

A lot of the taxation of liquor has been in place since prohibition ended. I do not know if it is standardized, or unique to Nevada.

ASSEMBLYMAN YEAGER:

In FY 2020, there was a decrease in gallons taxed. Was this a result of the closures due to the pandemic?

MR. NAKAMOTO:

That is likely. The major purchasers of alcohol in Nevada are casinos, restaurants, and other hospitality venues. Because there was less demand from those establishments due to closures, less liquor was imported into the state.

There was no further discussion on this item.

IX. PRESENTATION ON HISTORICAL STATE GENERAL FUND REVENUE COLLECTIONS INCLUDING ON AN INFLATION ADJUSTED AND INFLATION ADJUSTED PER CAPITA BASIS.
A. State 2% Sales Tax
B. State Liquor Tax

There was no discussion on this item.

X. PRESENTATION ON FY 2022 YEAR-TO-DATE ACTUAL COLLECTIONS COMPARED TO THE ECONOMIC FORUM MAY 4, 2021, FORECAST, ADJUSTED FOR LEGISLATIVE ACTIONS APPROVED DURING THE 2021 SESSION AND COURT DECISIONS.

JOE REEL (Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

The set of tables beginning on page 127 ([Exhibit A](#)) compares the FY 2022 forecast to the FY 2021 actual collections. Table 1 is a summary which shows the FY 2021 actual collections for each revenue source displayed, the FY 2022 forecast in the center, and the percentage of the total General Fund that each revenue source comprises of the total. The FY 2021 sales and use tax actual collections were approximately \$1.325 billion, which represented a 9.1% growth over the FY 2020 actual collections. The growth that was forecast by the Economic Forum of 2.3% is in the next column. The actual revenue came in significantly higher than forecast for the sales and use tax. The \$1.302 billion represents the Economic Forum's FY 2022 forecast of 4.8% growth. However, that was based on its forecast of 2.3% for FY 2021. The FY 2022 forecast is now -1.8% from the FY 2021 actual collections. The Economic Forum did not forecast -1.8% growth, but it forecast the \$1,301,969,000. This illustrates that the growth rates are a product of the actuals coming in higher or lower than the original forecast for the previous year. This table shows the major General Fund revenues—sales and use tax, gaming percentage fees, insurance premiums and so forth. This block of major General Fund revenues makes up approximately 80% of the total General Fund. The select non-major General Fund revenues in the next block make up approximately 10% of total revenues. The All Other General Fund Revenues category is the remainder of the revenues not shown specifically. The tax credits come off of the gross revenue. These are all shown as total gross revenues and then the tax credits that come off of the individual revenues. Because it is unknown when the actual tax credits will hit and which revenue sources they will go against, Fiscal staff is unable to allocate them to specific revenues initially in the forecasts.

Table 2 shows the actual FY 2021 year-to-date collections as a reference, the actual FY 2022 year-to-date collections, and the FY 2022 forecast, year to date (page 128, [Exhibit A](#)). For each revenue source, there is a number in parentheses that reflects the time period of revenue collected, e.g., six to eight months of the monthly revenues and the first two quarters of the quarterly revenue sources. For the sales and use tax, the year-to-date collections through the first six months of FY 2021 represents a -6.9% growth rate from FY 2020. In FY 2021, this represented 46.8% of the revenue collected for the

full fiscal year. There is similar information for FY 2022. Year-to-date actuals for sales and use tax are up 28.6% through this first six months. That represents 61.3% of the total revenue forecast for the year. The FY 2022 forecast year-to-date amount is approximately \$609 million, a -1.8% growth rate. Given that the actual collections are currently up 28.6%, the year-to-date actual collections for the first six months of sales and use tax in FY 2022 is up \$188,709,000 over the year-to-date forecast.

With the exception of the Commerce Tax, all the major revenue sources are running above the forecast through the first six to eight months and the first two quarters. The total for all major General Fund revenue sources is approximately \$598.5 million above the forecast—35.3% above the forecast, year to date.

The select non-major sources are \$51.5 million above the forecast for these six to eight months. That is 17.4% above the forecast. All the other General Fund revenues are up \$18.5 million, or 19.5%. Through these first six to eight months and first two quarters, total General Fund revenue is up approximately \$668.6 million, or 32.6%, above the forecast.

CHAIR NEAL:

Legislators must not start thinking about how to spend this extra funding. Maintenance and services that have not yet been fully funded still need to be considered.

MR. REEL:

That data is also on gross terms.

Table 3 shows what remains to be collected (page 129, [Exhibit A](#)). For FY 2022, just under 40% of revenues still need to be collected to hit the forecast. At this point in FY 2021, more than 53% of the revenue was still needed.

Tables 4 and 5 are essentially the same reference as Tables 1 and 2. Table 4 shows the FY 2021 actual collections and FY 2022 collections, but it shows the net amounts after the allocation of tax credits. Table 5 is the same year-to-date information as Table 2, but with the tax credits taken against these revenues reflected. Table 6 is a ledger that shows details for FY 2021, the FY 2022 forecast, and the year-to-date numbers for each of the revenue sources impacted by the tax credits.

CHAIR NEAL:

Money is set aside based on forecasts of how much will be needed for tax credits. Is this ever done for bills that are funded with one-time appropriations that ultimately have ongoing revenue impact?

MR. GUINDON:

Generally, a one-shot appropriation must be used for its specific purpose and any remaining funds are reverted. There could be a program with funding appropriated only for one biennium with some suspicion that it may be ongoing, but it would then need to be addressed in the next legislative session. Those types of things are not taken into consideration when looking at proposals. There could be startup costs and ongoing costs both included in a proposal but, due to inflation or caseload growth, the ongoing cost rises. Fiscal staff and the Governor's Finance Office look at those kinds of things during the budget process.

ASSEMBLYMAN YEAGER:

The first six months of data are encouraging, but I heed the caution of Chair Neal that we ought not spend that money yet. Historically—pandemic years excluded—does Nevada tend to collect revenues evenly throughout the calendar year? Could one expect that the second half of the year would be similar to the first?

MR. REEL:

Some revenues come in at the end of the year, but it varies from year to year. Generally, a large drop-off would not be expected for the second half of the year.

MR. GUINDON:

I do not think that the actual collected revenues from the first half of the fiscal year should be expected to be matched in the second half. The methodology used is difficult, in general, but especially during business cycle turning points. A fiscal year forecast does not necessarily translate into months or quarters. In the last part of FY 2021, stimulus payments were disbursed. March 2021 was the first record gaming win month recorded while still dealing with the pandemic effect. The comparisons will probably be good, but they will not be as good over the end of FY 2022 as they were for the beginning of FY 2022. The delta will continue to grow, but there will not be the order of magnitude seen in the first half of the fiscal year.

There was no further discussion on this item.

XI. SCHEDULING OF FUTURE MEETINGS.

The next meeting of the Joint Interim Standing Committee on Revenue was not scheduled.

XII. PUBLIC COMMENT.

There was no public comment.

XIII. ADJOURNMENT.

Chair Neal adjourned the meeting at 4:03 p.m.

Respectfully submitted,

Anna Freeman, Committee Secretary

APPROVED:

Senator Dina Neal, Chair

Date