

THE FORTY-SIXTH DAY

CARSON CITY (Thursday), March 19, 2015

Senate called to order at 11:27 a.m.

President pro Tempore Hardy presiding.

Roll called.

All present except Senators Segerblom and Smith, who were excused.

Prayer by the Chaplain, Pastor Norm Milz.

Heavenly Father, as we come together today, may we look carefully and think clearly at every decision we make for the good of Nevada. Help us look beyond individual thoughts and look for the best of all.

As committee meetings continue and present additional thought and position to the bills, may we work in this Chamber, with the Assembly, to make sure the bills are clear and the best for all citizens.

Help us as members of the Senate to look for the best in the Nation and work diligently to make our decisions raise the bar in this State. Help us honor all people no matter what gender, nationality or political persuasion they are. May we see each of them as a gift from Your creative hand.

We ask these things in the Name of Your Son, Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

Mr. President pro Tempore announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 11:32 a.m.

SENATE IN SESSION

At 11:34 a.m.

President pro Tempore Hardy presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Education, to which was referred Senate Bill No. 133, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BECKY HARRIS, *Chair*

Mr. President pro Tempore:

Your Committee on Revenue and Economic Development, to which was referred Senate Bill No. 252, has had the same under consideration, and begs leave to report the same back with the recommendation: Without recommendation.

MICHAEL ROBERSON, *Chair*

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Natural Resources:

Senate Bill No. 417—AN ACT relating to wildlife; prohibiting the use of telemetry data to hunt or kill game mammals or game birds; providing a penalty; and providing other matters properly relating thereto.

Senator Gustavson moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

By the Committee on Education:

Senate Bill No. 418—AN ACT relating to postsecondary education; revising provisions governing refunds paid by private postsecondary educational institutions; and providing other matters properly relating thereto.

Senator Harris moved that the bill be referred to the Committee on Education.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 175.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 136.

SUMMARY—Makes various changes relating to public safety. (BDR 15-515)

AN ACT relating to public safety; revising provisions governing justifiable homicide; prohibiting a person convicted in this State or any other state of a misdemeanor crime of domestic violence from owning or having in his or her possession or under his or her custody or control any firearm; ~~authorizing certain persons who possess a permit to carry a concealed firearm issued by another state to carry a concealed firearm in this State in accordance with the laws of this State;~~ requiring the Department of Public Safety to make certain determinations before issuing a list of states for purposes of reciprocity; prohibiting a person against whom an extended order for protection against domestic violence is issued from subsequently purchasing or otherwise acquiring any firearm during the period the extended order is in effect; revising provisions governing civil liability in actions involving the use of force; expanding the rights and powers reserved for the Legislature relating to the regulation of firearms and ammunition; requiring the governing bodies of certain political subdivisions of this State to repeal certain ordinances and regulations; authorizing a person adversely affected by the enforcement of such an ordinance or regulation to seek declarative and injunctive relief and damages; providing that such a person is entitled to certain damages; deleting certain provisions relating to the registration of firearms capable of being concealed; revising the applicability of certain provisions pertaining to the regulation of firearms by local governments; ~~repealing certain provisions~~

~~concerning reciprocity of permits to carry concealed firearms,]~~ providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person against a person who manifestly intends or endeavors to commit a felony or to enter the habitation of another for the purpose of assaulting a person who is in the habitation. (NRS 200.120) Section 1 of this bill revises the definition of "justifiable homicide" to include specifically the killing of a person in defense ~~(of a)~~ an occupied motor vehicle or in defense against any person who manifestly intends and endeavors to enter the occupied motor vehicle of another for the purpose of assaulting a person who is in the motor vehicle.

Existing law also provides that a killing is justifiable if the circumstances were sufficient to excite the fears of a reasonable person and the person killing really acted under the influence of those fears and not in a spirit of revenge. (NRS 200.130) Section 2 of this bill establishes a rebuttable presumption that a killing is justifiable under the standard set forth in NRS 200.130 if the person killing: (1) knew or ~~had reason to believe~~ reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the habitation or property of another; (2) knew or ~~had reason to believe~~ reasonably believed that the person who was killed was committing or attempting to commit a ~~felony,~~ crime of violence; and (3) did not provoke the person who was killed.

Existing law prohibits certain persons from owning or having in their possession or under their custody or control any firearm. A person who violates such a provision is guilty of a category B felony. (NRS 202.360) Section 3 of this bill adds to such a list of persons a person who has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in federal law.

Existing law authorizes a court to issue an extended order for protection against domestic violence. (NRS 33.030) Section 5 of this bill provides that if such an extended order is issued, the adverse party is prohibited from purchasing or otherwise acquiring any firearm during the period that the extended order is in effect. A person who violates such a provision is guilty of a category B felony.

Existing law provides that in a civil action brought by or on behalf of a person against whom force which is intended or likely to cause death or bodily injury was used: (1) there is a presumption that the person who used such force had a reasonable fear of imminent death or bodily injury to himself or herself or another person if the person against whom such force was used was committing burglary or invasion of the home; and (2) that presumption must be overcome by clear and convincing evidence to the contrary for the civil action to be maintained. (NRS 41.095) Section 7 of this

bill extends that presumption to circumstances in which the person who used such force was in his or her motor vehicle and the other person was committing grand larceny of the motor vehicle with the use or threatened use of a deadly weapon. Section 7 also enacts a provision, based upon Texas law, which provides that a person is immune to civil liability for using force which is intended or likely to cause death or bodily injury if the person was justified in using such force under the applicable provisions of Nevada criminal law. (Texas Civil Practice and Remedies Code § 83.001)

Existing law requires the Department of Public Safety to prepare annually a list of states that have: (1) requirements for the issuance of a permit to carry a concealed firearm that are substantially similar to or more stringent than the requirements set forth in this State; and (2) an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm by that state and which a law enforcement officer in this State may access at all times. Additionally, a state may only be included in the list if the Nevada Sheriffs' and Chiefs' Association agrees with the Department's inclusion of the state. (NRS 202.3689) Existing law also authorizes a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list to carry a concealed firearm in this State in accordance with the laws of this State unless the person: (1) becomes a resident of this State; and (2) has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State. (NRS 202.3688)

~~[Section 13 of this bill repeals all provisions of existing law relating to the list prepared by the Department. Section 4 of this bill authorizes a person who is at least 21 years of age and possesses a permit to carry a concealed firearm that was issued by another state to carry a concealed firearm in this State in accordance with the laws of this State unless the person: (1) becomes a resident of this State; and (2) has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State.] Existing law requires the Department to annually prepare a list of states which it determines are substantially similar to or more stringent than this State for purposes of issuing a permit to carry a concealed firearm. (NRS 202.3689) Section 4.5 of this bill instead requires the Department to determine whether each state requires a person to complete any training, class or program for purposes of preparing the list.~~

Existing law provides that, except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State, and further provides that no county, city or town may infringe upon those rights and powers. (NRS 244.364, 268.418, 269.222) Sections 8-10 of this bill expand such rights and powers of the Legislature to include those necessary to: (1) regulate the carrying and storage of firearms, firearm accessories and ammunition; and (2) define all such terms. Sections 8-10

provide that certain ordinances or regulations which are inconsistent with these rights and powers of the Legislature are null and void and require the governing bodies of certain political subdivisions of this State to repeal any such ordinance or regulation. Sections 8-10 also authorize any person who is adversely affected by the enforcement of any such ordinance or regulation on or after October 1, 2015, to file suit in the appropriate court for declarative and injunctive relief and damages. Such a person is entitled to certain damages depending on whether and when the relevant governing body of a political subdivision repeals such an ordinance or a regulation.

Existing law also requires certain political subdivisions of this State in a county whose population is 700,000 or more (currently Clark County), which adopted ordinances or regulations before June 13, 1989, that require the registration of firearms capable of being concealed, to make certain amendments to such registration provisions. (NRS 244.364, 268.418, 269.222) Sections 8-10 additionally delete the provisions requiring certain political subdivisions of this State to make such amendments.

Assembly Bill No. 147 of the 1989 Legislative Session (A.B. 147) reserved for the Legislature the rights and powers necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State. (Chapter 308, Statutes of Nevada 1989, p. 652) However, section 5 of A.B. 147 provided that the preemptive effect of the bill applied only to ordinances or regulations adopted by certain political subdivisions on or after June 13, 1989. Section 11 of this bill amends section 5 of A.B. 147 to include and preempt ordinances or regulations adopted by certain political subdivisions before June 13, 1989.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 200.120 is hereby amended to read as follows:

200.120 1. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of an occupied habitation, ~~property, including, without limitation, a~~ an occupied motor vehicle ~~;~~ or person, against one who manifestly intends or endeavors ~~by violence or surprise,~~ to commit a ~~felony,~~ crime of violence, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the occupied habitation or ~~property, including, without limitation, a~~ occupied motor vehicle, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

2. A person is not required to retreat before using deadly force as provided in subsection 1 if the person:

- (a) Is not the original aggressor;
- (b) Has a right to be present at the location where deadly force is used;

and

(c) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used.

3. ~~As used in this section~~ ~~,"motor"]~~ :

~~(a) "Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.~~

~~(b) "Motor vehicle" means every vehicle which is self-propelled.~~

Sec. 2. NRS 200.130 is hereby amended to read as follows:

200.130 1. A bare fear of any of the offenses mentioned in NRS 200.120, to prevent which the homicide is alleged to have been committed, ~~[shall not be]~~ is not sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person and that the ~~[party]~~ person killing really acted under the influence of those fears and not in a spirit of revenge.

2. ~~It is presumed]~~ There is a rebuttable presumption that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge if the person killing:

~~(a) Knew or [had reason to believe]~~ reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the occupied habitation or [property, including, without limitation, a] occupied motor vehicle, of another;

~~(b) Knew or [had reason to believe]~~ reasonably believed that the person who was killed was committing or attempting to commit a [felony,] crime of violence; and

~~(c) Did not provoke the person who was killed.~~

3. ~~As used in this section~~ ~~,"motor"]~~ :

~~(a) "Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.~~

~~(b) "Motor vehicle" means every vehicle which is self-propelled.~~

Sec. 3. NRS 202.360 is hereby amended to read as follows:

202.360 1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33);

(b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

~~[(b)]~~ (c) Is a fugitive from justice; or

~~[(c)]~~ (d) Is an unlawful user of, or addicted to, any controlled substance.

→ A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison

for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

2. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility; or

(b) Is illegally or unlawfully in the United States.

↪ A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) "Controlled substance" has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

Sec. 4. NRS 202.3688 is hereby amended to read as follows:

202.3688 1. Except as otherwise provided in subsection 2, a person who ~~is at least 21 years of age and~~ possesses a permit to carry a concealed firearm that was issued by ~~a~~ ~~another~~ state included in the list prepared pursuant to NRS 202.3689 may carry a concealed firearm in this State in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive.

2. A person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 ~~meets the requirements of subsection 1~~ may not carry a concealed firearm in this State if the person:

(a) Becomes a resident of this State; and

(b) Has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State.

~~[3. A person who carries a concealed firearm pursuant to this section is subject to the same legal restrictions and requirements imposed upon a person who has been issued a permit by a sheriff in this State.]~~

Sec. 4.5. *NRS 202.3689 is hereby amended to read as follows:*

202.3689 1. On or before July 1 of each year, the Department shall:

(a) ~~[Examine the requirements for the]~~ Determine whether each state requires a person to complete any training, class or program before the issuance of a permit to carry a concealed firearm in ~~each~~ that state, ~~and determine whether the requirements of each state are substantially similar to or more stringent than the requirements set forth in NRS 202.3653 to 202.369, inclusive.]~~

(b) Determine whether each state has an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a law enforcement officer in this State may access at all times through a national law enforcement telecommunications system.

(c) Prepare a list of states that meet the requirements of paragraphs (a) and (b). A state must not be included in the list unless the Nevada Sheriffs' and Chiefs' Association agrees with the Department that the state should be included in the list.

(d) Provide a copy of the list prepared pursuant to paragraph (c) to each law enforcement agency in this State.

2. The Department shall, upon request, make the list prepared pursuant to subsection 1 available to the public.

Sec. 5. Chapter 33 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *If a court issues an extended order pursuant to NRS 33.030, the adverse party shall not subsequently purchase or otherwise acquire any firearm during the period that the extended order is in effect.*

2. *A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.*

Sec. 6. NRS 33.017 is hereby amended to read as follows:

33.017 As used in NRS 33.017 to 33.100, inclusive, *and section 5 of this act*, unless the context otherwise requires:

1. "Extended order" means an extended order for protection against domestic violence.

2. "Temporary order" means a temporary order for protection against domestic violence.

Sec. 7. NRS 41.095 is hereby amended to read as follows:

41.095 1. For the purposes of NRS 41.085 and 41.130, any person who uses ~~[- while]~~:

(a) *While* lawfully in his or her residence, ~~[or]~~ in transient lodging ~~[or]~~ or in a motor vehicle that is not his or her residence, force which is intended or likely to cause death or bodily injury is presumed to have had a reasonable fear of imminent death or bodily injury to himself or herself or another person lawfully in the residence, ~~[or]~~ transient lodging or motor vehicle if the force is used against a person who is committing burglary, ~~[or]~~ invasion of the home or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon and the person using the force knew or had reason to believe that burglary, ~~[or]~~ invasion of the home or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon was being committed. An action to recover damages for personal injuries to or the wrongful death of the person who committed burglary, ~~[or]~~ invasion of the home or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon may not be maintained against the person who used such force unless the presumption is overcome by clear and convincing evidence to the contrary.

(b) *Force which is intended or likely to cause death or bodily injury is immune from civil liability in an action to recover damages for personal*

injuries to or the wrongful death of a person against whom such force was used if the use of such force was justified under the applicable provisions of chapter 200 of NRS relating to the use of such force.

2. As used in this section ~~[, "residence"]~~ :

(a) *"Deadly weapon" has the meaning ascribed to it in NRS 193.165.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

(c) *"Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.*

Sec. 8. NRS 244.364 is hereby amended to read as follows:

244.364 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*

(b) *The regulation of the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in this State and the ability to define such terms is within the exclusive domain of the Legislature, and any other law, regulation, rule or ordinance to the contrary is null and void.*

(c) *This section must be liberally construed to effectuate its purpose.*

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, storage, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~[,]~~ and ~~[no]~~ *to define such terms. No county may infringe upon those rights and powers. [As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.*

~~—2.]~~ 3. A board of county commissioners may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~[3.—If a board of county commissioners in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the board of county commissioners shall amend such an ordinance or regulation to require:~~

~~—(a) A period of at least 60 days of residency in the county before registration of such a firearm is required.~~

~~—(b) A period of at least 72 hours for the registration of a pistol by a resident of the county upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~—4.—Except as otherwise provided in subsection 1, as]~~

4. Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a county in violation of this section is void.

5. A board of county commissioners shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the county must be removed.

6. A board of county commissioners shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the county or any county agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a county zoning or business ordinance which is generally applicable to businesses within the county and thereby affects a firearms business within the county, including, without limitation, an indoor or outdoor shooting range.

(e) A county from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the county.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~means~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~be used as a weapon from which~~, able to or able to be readily converted to expel a projectile ~~may be expelled~~ through the barrel by the ~~force~~ action of ~~any explosion or~~ an explosive, other form of combustion ~~or~~

~~(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.~~ or expanding gases.

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a county; and

(III) Is subject to the county ordinance or regulation at issue.

(3) *A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.*

(e) *"Political subdivision" includes, without limitation, a state agency, county, city, town or school district.*

(f) *"Public employer" has the meaning ascribed to it in NRS 286.070.*

Sec. 9. NRS 268.418 is hereby amended to read as follows:

268.418 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*

(b) *The regulation of the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in this State and the ability to define such terms is within the exclusive domain of the Legislature, and any other law, regulation, rule or ordinance to the contrary is null and void.*

(c) *This section must be liberally construed to effectuate its purpose.*

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, storage, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~[,]~~ and ~~[no]~~ *to define such terms. No city may infringe upon those rights and powers. [As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.*

~~—2.]~~ 3. The governing body of a city may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~[3. If the governing body of a city in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the governing body shall amend such an ordinance or regulation to require:~~

~~—(a) A period of at least 60 days of residency in the city before registration of such a firearm is required.~~

~~—(b) A period of at least 72 hours for the registration of a pistol by a resident of the city upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~—4. Except as otherwise provided in subsection 1, as]~~

4. *Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any*

official action taken by an employee or agent of a city in violation of this section is void.

5. The governing body of a city shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the city must be removed.

6. The governing body of a city shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the city or any city agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a city zoning or business ordinance which is generally applicable to businesses within the city and thereby affects

a firearms business within the city, including, without limitation, an indoor or outdoor shooting range.

(e) A city from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the city.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~means~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~be used as a weapon from which~~, able to or able to be readily converted to expel a projectile ~~may be expelled~~ through the barrel by the ~~force~~ action of ~~any explosion or~~ an explosive, other form of combustion ~~[-~~

~~—(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~—(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.] or expanding gases.~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a city; and

(III) Is subject to the city ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 10. NRS 269.222 is hereby amended to read as follows:

269.222 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*

(b) *The regulation of the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in this State and the ability to define such terms is within the exclusive domain of the Legislature, and any other law, regulation, rule or ordinance to the contrary is null and void.*

(c) *This section must be liberally construed to effectuate its purpose.*

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, storage, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~and to~~ ~~define such terms.~~ No town may infringe upon those rights and powers. ~~As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.~~

~~2.]~~ 3. A town board may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~3.]~~ ~~If a town board in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the town board shall amend such an ordinance or regulation to require:~~

~~(a) A period of at least 60 days of residency in the town before registration of such a firearm is required.~~

~~(b) A period of at least 72 hours for the registration of a pistol by a resident of the town upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~4.]~~ Except as otherwise provided in subsection 1, as]

4. *Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a town in violation of this section is void.*

5. *A town board shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the town must be removed.*

6. *A town board shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the town or any town agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.*

7. *Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:*

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. *This section must not be construed to prevent:*

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment of enforcement of a town zoning or business ordinance which is generally applicable to businesses within the town and thereby affects a firearms business within the town, including, without limitation, an indoor or outdoor shooting range.

(e) A town from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the town.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting

and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~means~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~be used as a weapon from which~~, able to or able to be readily converted to expel a projectile ~~may be expelled~~ through the barrel by the ~~force~~ action of ~~any explosion or~~ an explosive, other form of combustion ~~[-~~

~~(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.] or expanding gases.~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a town; and

(III) Is subject to the town ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 11. Section 5 of chapter 308, Statutes of Nevada 1989, as amended by chapter 320, Statutes of Nevada 2007, at page 1291, is hereby amended to read as follows:

Sec. 5. ~~[1. Except as otherwise provided in subsection 2, the provisions of this act apply to ordinances or regulations adopted on or after June 13, 1989.~~

~~—2.] The provisions of this act [as amended on October 1, 2007,] apply to ordinances or regulations adopted before, on or after June 13, 1989.~~

Sec. 12. 1. The provisions of NRS 202.360, as amended by section 3 of this act, apply to an offense committed before, on or after the effective date of this act.

2. The provisions of section 5 of this act apply to an extended order pursuant to NRS 33.030 issued on or after the effective date of this act.

Sec. 12.5. Records relating to the registration of any firearm capable of being concealed pursuant to any ordinance or regulation adopted by a political subdivision before June 13, 1989, must be destroyed within 1 year after the effective date of this act.

Sec. 13. ~~[NRS 202.3689 is hereby repealed.] (Deleted by amendment.)~~

Sec. 14. This act becomes effective upon passage and approval.

~~TEXT OF REPEALED SECTION~~

~~202.3689 Department to prepare list of states that meet certain requirements concerning permits; Department to provide copy of list to law enforcement agencies in this State; Department to make list available to public.~~

~~1. On or before July 1 of each year, the Department shall:~~

~~—(a) Examine the requirements for the issuance of a permit to carry a concealed firearm in each state and determine whether the requirements of each state are substantially similar to or more stringent than the requirements set forth in NRS 202.3653 to 202.369, inclusive.~~

~~—(b) Determine whether each state has an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a law enforcement officer in this State may access at all times through a national law enforcement telecommunications system.~~

~~—(c) Prepare a list of states that meet the requirements of paragraphs (a) and (b). A state must not be included in the list unless the Nevada Sheriffs' and Chiefs' Association agrees with the Department that the state should be included in the list.~~

~~—(d) Provide a copy of the list prepared pursuant to paragraph (c) to each law enforcement agency in this State.~~

~~2. The Department shall, upon request, make the list prepared pursuant to subsection 1 available to the public.]~~

Senator Brower moved the adoption of the amendment.

Remarks by Senator Brower.

This amendment does two things. It clarifies that justifiable homicide provisions in the bill that apply in the law apply only to occupied habitations and vehicles and only against crimes of

violence. It also tightens the CCW reciprocity provisions versus the original provisions in the bill. This amended language was unanimously approved by the Judiciary Committee.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 155.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 212.

Bill read third time.

Remarks by Senator Hammond.

Senate Bill No. 212 expands the authority of a school district superintendent to modify a required suspension or expulsion, for good cause, if a pupil commits a battery that results in bodily injury of a school employee, sells or distributes a controlled substance, or is deemed a habitual disciplinary problem. Such a modification must be made in writing. The bill also clarifies the nature of certain offences and repeals the provision making it a misdemeanor to disturb the peace of any public school by using vile or indecent language within the building or grounds of a school.

Roll call on Senate Bill No. 212:

YEAS—19.

NAYS—None.

NAYS—Segerblom, Smith—2

Senate Bill No. 212 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 76.

Bill read third time.

Remarks by Senator Harris.

I am very excited about this bill so I am glad we are here, now. Assembly Bill No. 76 requires the Department of Education to share with the Interagency Council on Veterans Affairs aggregate data collected concerning each pupil whose parent or guardian is a member of the Armed Forces of the United States, a reserve component thereof or the National Guard.

The bill also encourages the Board of Regents of the Nevada System of Higher Education to foster a culture that recognizes and supports veterans and extends from two years to five years the time period a veteran who has been honorably discharged is eligible for resident or in-state fee charges. Finally, Assembly Bill No. 76 requires that the Board of Regents submit, on or before November 30 of each year, a report to the Legislature or the Legislative Committee on Education when the Legislature is not in regular session concerning the participation of students who are veterans in the Nevada System of Higher Education. This bill is effective on July 1, 2015.

The overall impact of this bill is that veterans will now be treated in the same manner as residents, who do not pay tuition but who do pay fees. They are treated as an in-state student.

Roll call on Assembly Bill No. 76:

YEAS—19.

NAYS—None.

NAYS—Segerblom, Smith—2

Assembly Bill No. 76 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Roberson moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 252 and various revenue plans with Senator Roberson as Chair and Senator Brower as Vice Chair of the Committee of the Whole.

Motion carried.

Mr. President pro Tempore announced that if there were no objections, the Senate would recess until 4 p.m.

Motion carried.

Senate in recess at 11:47 a.m.

IN COMMITTEE OF THE WHOLE

At 4:12 p.m.

Senator Roberson presiding.

Senate Bill No. 252 and various revenue plans were considered.

The Committee of the Whole was addressed by Senator Roberson; Chris Nielsen, Deputy Chief of Staff, Office of the Governor; Jeremy Aguero, Principal Analyst, Applied Analysis; Senator Lipparelli; Senator Farley; Senator Settlemeyer; Senator Kieckhefer; Senator Ford; Senator Denis; Senator Manendo; Senator Harris; Senator Hammond; Senator Brower; Senator Goicoechea; Deonne Contine, Executive Director, Nevada Department of Taxation; Victoria Carreon, Kenny Guinn Center for Policy Priorities; David W. Carter, Nevada Legislative Action Committee; Linda Sanders; and Bonnie McDaniel.

SENATOR ROBERSON:

Thank you all for being here, today. Yesterday, as you know, we had a joint committee meeting with Senate Revenue and Economic Development and Assembly Taxation. We had a nine and a half hour hearing on Senate Bill No. 252. Because we had a full agenda yesterday, with witnesses testifying regarding the bill, we were limited in our question and answer period with Chris Nielsen, Deonne Contine and Jeremy Aguero. The purpose of today's Committee of the Whole meeting is to have a more in-depth, give-and-take on Senate Bill No. 252 with the three mentioned expert witnesses. Mr. Aguero, Ms. Contine, Mr. Nielsen will give a brief overview, probably their overview of the bill from yesterday, then I want to get into questions. We want to get into the weeds on this: the technical aspects of this bill. I want every member of this body to be able to ask every question they want to ask and to try to get those questions and issues addressed. That is the purpose of today's hearing. Having said that, Mr. Nielsen would you like to begin?

CHRIS NIELSEN (Deputy Chief of Staff, Office of the Governor):

Many of you were here for yesterday's hearing, so please bear with me if I repeat myself. As Governor Sandoval stressed yesterday, the money raised from the Business License Fee is budgeted for new, categorical K-12 education programs. The hearing, today, is not about education; it is about the Business License Fee (BLF). The revamped BLF is an industry-specific, graduated-fee structure, that uses the existing BLF infrastructure. At a high

level, this is how it works: every business will be categorized into 1 of 30 macro-sector categories in the economy such as transportation, agriculture, retail, wholesale, construction and others. The category of each business category is determined by its North American Industry Classification System (NAICS) code. The Secretary of State, the Department of Taxation and the Employment Security Division already have this information for all Nevada businesses. It is simply a nationwide, universally used business classification system. Once a business determines which category it is in and determines the gross revenue for each quarter, a fee is assigned based on that revenue. For example, if you are in a construction category, which would be a NAICS Code 23, and you have \$450,000 of gross revenue, you would pay a quarterly fee of \$425.

Some of you may see Senate Bill No. 252 as complicated by its sheer length, because it is 130 pages long. The guts of it, however, are only 14 pages long, with 20 pages devoted to rate tables. The balance of the document details administrative changes such as changing the administration from the Secretary of State's Office to the Department of Taxation.

I will now going to turn the presentation over to Jeremy Aguero and Deonne Contine.

JEREMY AGUERO (Principal Analyst, Applied Analysis):

Yesterday, I gave a brief presentation on how we got to the concept of modifying the State's Business License Fee and why, in my opinion, it is a relatively elegant solution to the challenges that face the State in terms of generating revenue to support the Governor's budget, particularly funding education programs.

Before we got started yesterday, I had three people within one hour come to me and tell me that this was a corporate income tax. I had someone say it was a gross receipts tax and someone else tell me it was nothing more than a derivative of the exact same thing, in a different form, of what was rejected by the voters as part of State Question 3. I believe all of those are incorrect, and I tried to justify that in my testimony. Perhaps, it would be beneficial to look at the history of how we got to where we are and the way we have gained experience relative to what might work for Nevada and what might not work for Nevada; the way we have learned from the positive lessons and the failures from other states. That might be helpful in guiding our discussion.

There seems to be some perception that what the Governor has proposed is a corporate income tax. A corporate income tax is a tax that essentially takes all of my revenue, deducts all of my expenses and whatever is left over is the profit. The profit, at the end of the day, is subject to a percentage. Sometimes, this is as low as 2 or 3 percent, but sometimes it is as high as 10 percent. We think about this very much the same way we think about personal income taxes or the corporate income taxes businesses always pay at the federal level. That is similar to what the federal government does. This concept is different for a number of reasons.

It is not a net income tax. Someone does not add up all their revenues. We do not subtract all of our expenses. It is not based on a percentage of profit. As a matter of fact, it is probably as far away as we can get from a net income tax, and there is a reason for that. Mr. Nielsen talked about it a little yesterday, so I will reference a few of his comments. First and foremost, this is among the least stable sources of revenue from a business taxation standpoint. We get that. When the economy goes down, profitability goes down and collections go down. At a period in which the demand for services has a tendency to be at its highest, as we were talking about various alternatives as it may relate to what the State could do, this is probably the one that was disposed of first. The message that was conveyed to me is that we do not need more instability in our State's tax system. The whole idea was to eliminate instability, to increase equity and to make it a little more predictable. If there are any question as to whether or not what is being proposed is a corporate income tax, I can address those questions now.

SENATOR LIPPARELLI:

If what you just said is true—that the Business License Fee is different from a gross receipts tax or a business income tax—then why is there an accommodation for the different categories? If that is true, why wouldn't we just have an application across the board? Why do you go through the exercise of creating accommodations for each one of these business categories if is not directed or paying attention to the notion of what these different businesses might produce in gross margin? It would seem to me you are anticipating gross margin in the way you have set up

your structures. That, by itself, starts to create confusion in my mind about your opening statement that this is unrelated to corporate income.

MR. AGUERO:

Thank you, Senator Lipparelli. Remember, when we are talking about the rates and we will get into a lot of detail today on all of the rates, they are essentially adjusted for the margin of the business. For each industry, they are calculated based on total revenues. We will talk about how that is defined, and they are adjusted for either the cost of goods sold, the cost of labor or a 30-percent standard deduction. If we were going to have it as a corporate income tax, those would be deducted for a cost of goods sold, the cost of labor and any other expenditure you would deduct from revenue to ultimately get to profitability. You could think about it as a modified income tax, if you would like, essentially adding whatever you are not subtracting back in. You could also think about it as a modified gross receipts tax. If at the bottom of the income statement is profit, and everybody would receive the same income tax rate or if its graduated, that could be possible if we think about it at the top of the income statement, where essentially you are taxing gross revenue without any exemptions whatsoever. It is neither one of those things. The reason for the differential in the rates is to reflect the differential in the margin of the industries, not the differential in the profitability of the industries. If we were to do that, we would have to subtract the cost of goods sold or cost of labor or other expenditures. We would have to deduct them all like we do for federal income taxes.

SENATOR LIPPARELLI:

Along those lines, you also make changes in the various strata within each of those. You are coming back to my point again, if it was a flat business tax and applied across the board, but you are also making accommodations within the revenue structures from top to bottom. I have a questions about gross margins. If I am reading the tables right, you are anticipating what that net-effective tax rate is as a result of applying it across the board. If I am a business, I am looking at my income statement and I am saying at the end of the day—and there is great disparity even within the categories you create—some people generate great gross margins and others do not. It appears the effective tax rate I would apply to the fee I am paying is partly determined by "the higher I go, the lower I pay."

MR. AGUERO:

You had me until the very end: "the higher I go, the lower I pay." Can you explain that to me?

SENATOR LIPPARELLI:

For example, I pulled five of the tables. On a relative basis, the small business guy is paying more in what is being proposed as an increase than the larger companies. When you apply the amount at the top margin, the larger companies are paying the least amount. The smaller companies are paying the most, on a relative basis, in the increase.

MR. AGUERO:

This is absolutely correct; your math is absolutely right. We used the calculation to go all the way through it. We actually started with the idea no one can pay less than the \$200 they are paying today in the BLF.

SENATOR LIPPARELLI:

That is fine, but why are the smaller people paying more?

MR. AGUERO:

What we did is create a baseline that said \$400 would be the lowest amount any business would pay. That applied relatively universally. Not only did it apply in each one of those columns you just went through, but it also applied to any business or business entity that was a nonemployer business. It also applied to any business that was an out-of-state business filing here for whatever purposes they may choose to file here. What we used was the smallest of the businesses which we tend to refer to as microbusinesses or nonemployer businesses. According to the U.S. Small Business Administration, there are approximately 180,000 of them, here, in Nevada, and they run the gamut. We treated them all the same for the purposes of this

legislation, not unlike what the BLF does today. It treats them all the same. Now, you are right, the percentage increase on the folks at the bottom of the spectrum goes from \$200 to \$400. They pay \$200 more, which very well may be a doubling, and to your point, is a higher effective tax rate, not unlike the BLF today. This, of course, would be a much higher effective tax rate on that same microbusiness or nonemployer business in comparison to a hospital or a hotel casino or a restaurant chain or something along those lines. That is the mathematics.

SENATOR LIPPARELLI:

How many of those businesses are there in the roughly 300,000 you mentioned yesterday?

MR. AGUERO:

By those businesses are you referring to the microbusinesses?

SENATOR LIPPARELLI:

Yes.

MR. AGUERO:

We are estimating it at about 180,000.

SENATOR LIPPARELLI:

So, 180,000 of the businesses we are including in this proposal are the ones that are going to experience the largest increase in their taxes?

MR. AGUERO:

The ones we are including—the 180,000—are the nonemployer businesses that exist in the State of Nevada today. I want to be careful about how I answer your question. Many of them will double; they will get a 100-percent increase. But, if we look at it in terms of the BLF, the larger companies at the top-end of the spectrum, both in absolute terms have a much higher tax. Of course, we would expect that. In percentage terms, they have a much higher increase, in many cases going from \$200 to more than \$1 million. Again, I do not disagree with you that there are many small businesses that will be affected. We heard some testimony about that before. There will be out-of-state companies that come here to file that will be affected. We heard that yesterday as well. At the end of your statement, you said those smaller businesses would bear a substantially higher tax increase. If your question is will the effective tax rate they bear be higher, which I think is what you were saying, the answer to that question is "yes" as it is today. If the question is whether their percentage tax increase or their absolute tax increase will be higher, the answer to that question will be "no." Of course, there will be other companies that will be much higher than that.

SENATOR FARLEY:

I have two questions with the issue about profit. State Question No. 3 taxed you whether you had profit or not, and this one does the same thing. My question is that, yesterday, you gave the example that the casinos have had negative revenue, but bigger companies have bigger cash flow and the ability to service debt better than smaller companies do. My concern is whether that was equated when you were thinking about this? Smaller companies have just started to get into the grey. We are not in the black. Anybody who is telling you the economy has recovered and companies are doing well and we can bear this is wrong because I have to bear this plus the Modified Business Tax (MBT). What happens? Did you calculate the actual impact. This is huge to small businesses who are in the grey, not in the black.

MR. AGUERO

First of all, you are absolutely correct in your statement that a profits tax is a tax in which I, as a business, would only pay in the event I actually have profits—in the black, as you referred to it. To be clear, businesses—all of us, myself, you, everyone—pay every tax other than a profits tax in the State of Nevada, today, irrespective of whether we make a profit or not. We pay the payroll tax whether we make a profit or not. We pay property taxes, retail, sales and use taxes whether we make a profit or not. Gaming companies pay gaming taxes whether they make a profit or not. Mining companies pay mining taxes whether they make a profit or not. Insurance

premium taxes are paid irrespective of profit. So, your point is an excellent one. However, the idea of trading off stability for, in that case equity, I think is a fair one.

The second question is did we consider that in terms of the analysis? The answer to that question is also "yes." The way we went through the exercise to determine who would pay and what the potential implications would be was to review data from the Internal Revenue Service (IRS). They provide data on corporate taxpayers, partnership taxpayers and all those types of things. We ran approximately 250 different categories of businesses; the construction industry looks like this; the health care industry looks like that and so forth and so on. There were many industries in there that ended up being, in terms of their average overall revenue, very small. What we found, was a couple of things. Number one was, like Senator Lipparelli said, they bear a higher marginal tax rate in terms of the Businesses License Fee while at the same time bearing a substantially lower tax burden in terms of the payroll tax, because of the \$340,000 standard exemption. Just to make sure we're all on the same page, the payroll tax is 1.17 percent on my taxable payroll, less a health-care exemption and anything in excess of what works out to be \$340,000 per year.

You are absolutely right that a small business would bear a higher relative tax burden in some cases. Among many, the sole business tax being paid is the \$200 and not the \$400. I used the term microbusiness a moment ago, and I will do that again. There is a provision within Senate Bill No. 252 that looks at anyone who has a small business they are running out of their home and making \$28,675 or 66 2/3 percent of the statewide average annual wage, which is roughly \$20.62 per hour. They are not considered a business for the purposes of this legislation. The smallest businesses, the ones being run out of the home, are exempt altogether from this, just as they are the \$200 business license fee. That is not new to this. That was a part of the business license fee before. The small businesses, as I think we would all think of as small businesses, currently bear a low tax burden of only \$200 because they do not make it over the \$340,000 exemption. Businesses that go beyond that of course, also pay the payroll tax. While I certainly agree with your position, in answer to the question of did we look at that, absolutely we did. I think what we found is there is a need to try and treat all of these industries as fairly as we can, but it is also important we have the widest possible tax base and the lowest possible tax rate, and that was an important component of it.

SENATOR FARLEY:

I am not necessarily talking about the home-based business. I am talking more about midsized businesses with over a \$1 million or \$2 million or \$3 million or \$5 million in revenue. The problem is, you have employees. I pay all of those taxes: the federal, the MBT, and now this in addition to me. I know casinos pay multiple lines of taxes as well. The reality is, where is the money going to come from? You know most of the market here in Nevada is small to midsized businesses. There are a lot of us out there and eventually, at some point, there has got to be money to pay for this. I look at this tax and I am wondering is it an appropriate spread in the right places? I am going off of Senator Lipparelli's comment that the burden is on businesses that are just barely staying alive. You are right, I do have to pay all of those taxes, and a lot of times, I sit there and wonder whether it is worth it.

MR. AGUERO:

That is a fair statement. I do not know that I have any defense for that. You are right. As we were trying to find the \$250 million—the question of looking at it solely on profit—we considered that our largest industry, gaming has posted seven consecutive years in which there was a loss would be pretty tough for us as a State, like you say.

SENATOR SETTELMAYER:

A lot of the questions I have go back to last night's information. Can you answer all of Carol Vallardo's questions? One of the first that came to my mind is, why are you doing this quarterly? Why not do it yearly? Why do it based off of your year, rather than the year you already have with the Internal Revenue Service. The reason I say quarterly is problematic is because for myself, in certain quarters, I am clearly sending in \$100. I assume we are going to send it through the same procedure we use currently for things such as sales tax, where we send it to

Arizona and they charge us \$27.50 to process it. Right off the top we have thrown over 25 percent of the money away.

MR. AGUERO

Senator, I am happy to go through each one of Carol Vallardo's comments. I think anytime Carol Vallardo opens her mouth, everybody starts getting their pens going, which is exactly the way it should be. I was asked to give an overview of how we got to where we were, so I paused at the point at which we got to why this is not a corporate income tax and why it is different from a corporate income tax. Ms. Contine is going to spend some time talking about the administration of it and some of those other things with regard to how it is collected and why it is done on a quarterly basis. If it would be okay with you, I would like to continue along this path. I will make absolutely certain that if those questions are not answered, we go through each and every one of Carol's questions. They are valid, and we are here to make sure if we are going to go forward with tax policy that it is the right policy.

SENATOR SETTELMAYER:

Thank you. If we are on the line of the discussion that Senator Lipparelli had, I am a little confused with the jumps. As I look at the agriculture schedule, the first \$1 million jump is \$692. At \$2 million to \$3 million, you are at \$659. The next jump is \$861; then \$530; \$609; \$700; \$896; \$916; \$1,165. Why are the jumps so different between million-dollar levels?

MR. AGUERO:

The way that it is calculated at each on one of those levels is exactly the same; the midpoint of the threshold is calculated as each one of those thresholds goes down. Whatever the center of the threshold is, the effective tax rate is applied to that in order to determine what the rate would be. What you are noticing is that as those rates go up and a company makes more money, that midpoint is going to be higher because they are all based on a 15 percent threshold. Any taxpayer within that threshold cannot be more than 15 percent higher or 15 percent lower than any of their competitors. That threshold is always calculated in the middle, but because the numbers get better, the thresholds get a little bigger as you move down the chain. The other answer to your question is, when we first went through the exercise, we had a lot fewer ranges and we started to have a number of fiscal cliffs. We then created a chart with 1 percent between the top and the bottom that had hundreds of ranges that were really tight. That chart was dozens and dozens of pages. What you are looking at is nothing more than the mathematics between each one of those, where we were trying to avoid anything that would be a fiscal cliff by making the ranges small enough, but still having few enough ranges where it is administratively reasonable.

SENATOR SETTELMAYER:

Thank you, I will reserve the rest of those questions for Ms. Contine later.

MR. AGUERO:

Now, we have treated the bottom of the income statement. We then go to the concept of where every conversation I think I have ever been in relative to taxation starts. There are only so many ways you are going to tax a business. In terms of a profits tax, we start at the bottom because that is pretty common; then, we almost look for ways to ensure stability. Stability is what is really important when the economy goes down. We still have to educate kids. We still have to keep prisoners in jail, and people still need health care when the economy is bad. As a matter of fact, sometimes, they need it even more. It always ends up going to the top of the income statement, and that is what is referred to as a gross receipts tax. I realize that a gross receipts tax has a certain connotation in this Legislature and in this State, but a gross receipts tax is nothing more than a tax that is applied to the top line of revenue of a business. That is really all it is.

In 2001, the Governor's Task Force on Tax Policy was impaneled, and for the better part of a year, that group of business people evaluated the various alternatives. As a matter of fact, they have one schedule included in that report that has all of the possible revenues going across the top. They, then rated every one of the revenues going down the left-hand side in terms of stability, equity and those type of things. Fast forwarding to 2003, the State was coming out of

the economic downturn, immediately leading up to and following the events of September 11, 2001. There was a lot of instability out there. Stability was really cheap. That group came forward with a gross receipts tax. I have been told this proposal is nothing more than a gross receipts tax. That this is exactly the same. That you can call it something different, you can manipulate the BLF, you can do anything you want to along those lines, but what this really is just a gross receipts tax all dressed up with different words. So, why is this not a gross receipts tax?

First of all there were a number of challenges dealt with by the Governor's Task Force on Tax Policy and the Legislature in 2003. Primary among them was the fact that the same rate applied to every single industry; it was totally uniform. This made it simple for us. This made it easy. We could essentially say a rate of 0.25 percent or 0.35 percent, depending on the various iterations of that particular alternative, would simply apply to all of the revenue for business in the entire State. That was simple. It made sense. It was arguably the most stable source of revenue we could have had. The problem we ran into was one of equity. Why? If we applied the same exact same rate to every single industry, then, we did not recognize exactly what we were talking about before; different industries are essentially different. I used this example before. The folks who were petroleum distributors came and said: "Look, we operate on these huge volumes and very low margins, and if you compare what we are paying against a company that manufactures and sells something that is big. They operate on large volumes, and they have large profit margins. The effective tax rate, the effective profit tax rate, what we end up paying in terms of what we earn is way higher. This is inequitable."

During that time, we also heard a lot about the single largest problem anyone brings up when we talk about a gross receipts tax, and that is Washington State. Washington has a Business and Occupation Tax. They have various rates today, but they had fewer back then. At that time, the concern was about pyramiding, essentially, that you would end up paying a tax on a tax on a tax. We talked a lot about pyramiding. We talked about how that would have less of an effect in the State of Nevada because we have a tendency to import a lot of things into the State. We talked about how it would really happen and whether there any way to get around it. Ultimately, pyramiding was a huge problem for Governor Guinn, the Governor's Task Force on Tax Policy and all the work we did on it. We had a hard time getting past the problem of pyramiding.

When we go through this exercise and thinking about how we might manipulate the business license fee in order to make it most effective, you will notice there are a number of provisions relative to the concept of pass-through revenue. In Texas, they actually refer to it as flow-through revenue. We can call it whatever we like, but let me give you a few examples. What can we learn from Governor Guinn's tax? Certainly, my fingerprints were all over it, so I am not here to cast aspersions against the Governor's Task Force on Tax Policy or Governor Guinn. I think it was brought in good faith and was a tremendous idea, but what can we learn from it?

Let us look at a contractor and a subcontractor. The contractor wins a bid for \$10 million. They then hire \$8 million worth of subcontractors. They are going to do \$2 million of the work, and the subcontractors are going to do the other \$8 million. Under Governor Guinn's tax, that general contractor would have paid taxes on the entire \$10 million and the subcontractors would have paid taxes on the \$8 million. That is what pyramiding is. There are many examples of those in here and I will not go through them all, but the fact that we have taken all of these steps to prevent them does not mean we are ever going to get rid of all pyramiding. We have said folks like contractors and subcontractors, a broker and a real estate agent, an affiliated business, all of those types of things are allowed to have special treatment. This is not so we could make this any more complicated, but rather based on what we learned in 2003, so that it would not be a gross receipts tax.

With that, Chair Roberson, if there are questions relative to whether or not this is a gross receipts tax similar to what was brought forward by other states, by the Governor's Task Force on Tax Policy or what we traditionally think about as a gross receipts tax, I will answer them.

SENATOR ROBERSON:

Any questions from the Committee at this point? Seeing none, please proceed, Mr. Aguero.

MR. AGUERO:

We are not going to tax at the bottom of the income statement, and we are not going to tax at the top of the income statement, because at the bottom it is going to be a net profits tax and at the top it is going to be a gross receipts tax. While we like the equity associated with a profits tax, for exactly the reasons mentioned before, and while we like the stability of a gross receipts tax, for all of the reasons you can imagine, the goal was to find something in between the two. Today, we have something that is between the two. You are either going to take gross revenue and subtract some things from it or you are going to take net profit and add some things back to it. It does not really matter because you are getting to the middle of the income statement no matter how you do it or you are going to choose to tax a business based on an expense line item. That is what we have chosen to do in the State of Nevada. We have said: "Let's take payroll, and let's apply our tax to that as an expense."

In 2010, then Majority Leader Horsford and Speaker Oceguela impaneled a group of business folks to go through the exercise of evaluating our taxes, not unlike what the Governor's Task Force on Tax Policy was going through in 2002. After the events of September 11, 2001, and how hard that struck our State, we were then in the midst of arguably the greatest economic downturn in the State of Nevada. In November and December 2010, they had gone through the exercise of looking at sales taxes and property taxes and were focused on the business tax and on the payroll tax. There was a general consensus among that group that having a business tax that disparately impacted companies that either hired more people or paid their employees more was bad tax policy. That was the conclusion they came to after they ran a number of analyses.

I had the opportunity to staff the group looking at the tax incidence between a payroll tax and profits tax and all of these other alternatives that were out there. They looked at taxes in places like Texas, and they looked at other sales tax models, such as Washington's Business and Occupation Tax. They looked at the Commercial Activity Tax in Ohio. They looked at all of those and ultimately settled on the idea of having a margin tax. They liked that. They found it to be more equitable for the sole reason it did not disparately impact a business that was selling labor instead of selling goods.

The challenges regarding a payroll tax are relatively straightforward. If I sell labor and you sell goods, or if I sell labor and you build an office building and rent it out, I am going to pay a lot more than you will if we are both generating, for example, \$10 million worth of total revenue. It is merely a question of tax incidence. The way our tax exists today, that disparately impacts certain groups. Who does it impact; who generates a lot of labor? We know it is leisure and hospitality. They are not the only ones however. Business and professional services, certainly to the extent they are over the threshold, are absolutely disparately impacted. Health care operations and construction companies have a tendency to be labor intensive, particularly many of the subcontractors; therefore, something needed to be changed. And things were. We focused on the Texas alternative.

A lot has been said about that alternative. This is what came forth with the Horsford-Oceguela tax plan of 2011, which had multiple parts associated with it. The principle element of it, at least before it went through its iterations once it hit the Legislative Building, was not to generate additional revenue. It was intended to be a tax-neutral alternative. They did not want to generate any additional money from the margin tax. All they wanted to do was take what was then about \$360 million being generated by the payroll tax and say: "You know what, we should be generating that same \$360 million from a margins tax." Why? Because it looked like our economy more so than a tax based solely on labor. That ultimately became the Horsford-Oceguela tax plan, and it moved forward in 2011. It became a piece of that legislation; then, it morphed into something completely different later in 2012 and into 2013 when Question 3, the Teachers Education Initiative, was generated.

I am not going to spend a lot of time going through the Teachers' Education Initiative because many things then were dramatically different from what we are talking about today. First and foremost is the tax rate. That tax rate was 2 percent; a single 2 percent that would have applied to all businesses. By most estimates, it would have generated between \$650-\$850 million per year. The current tax initiative has an effective tax rate of 0.163 percent. It is substantially lower. It is estimated at roughly \$250 million per year. That is what we tried to get it to.

There are also definitions that are used in Texas relative to its revenue. Texas tax is based on the federal tax return, where Senate Bill No. 252 bases its definition of revenue on the Ohio definition of revenue, which is simpler and more straightforward. The Texas alternative includes intangibles as part of its tax base, Senate Bill No. 252 does not include intangibles. I could go on and on and on relative to those differences, but I would argue that the two differences are, at least as important as the revenue differential, the problems Texas experienced. As I alluded to earlier, the goal is to not only learn from our own past, but also to learn from what worked and what did not work in other states. Where do we see the vast majority of lawsuits and those type of things happen? Where have they run into the most problems? One problem is how do I go from my total revenue to my margin-adjusted revenue? What do I include in cost of goods sold? What do I include in the cost of labor? What type of business am I? Those are tough questions. Senate Bill No. 252 takes that out of the equation by calculating that rate independent of those calculations.

The second problem they often deal with is the question of apportionment. Texas has changed some of the rules over time relative to apportionment and are now what is called a single factor apportionment state, simply using revenue for apportionment. Before that they did not do that. They learned from that, and so did we. We went forward. We do not have apportionment rules. We refined that by defining Nevada revenue simply, straightforwardly. If it is a good and it is sold to someone in Nevada, it is Nevada revenue. If it is a service and it is provided to someone in Nevada, it is a Nevada revenue. If you have an asset and it is used to generate revenue from someone in Nevada, it is Nevada revenue. It is as simple as that. What is proposed in Senate Bill No. 252 is not Question No. 3. As a matter of fact, it is not even close to what Question No. 3 is, as they also left out the concept of flow-through or pass-through revenue, which of course would have been problematic in any number of ways. I can now take any questions relative to the difference between the Governor's proposals in Senate Bill No. 252 and the Teacher's Education Initiative or what is referred to as Question No. 3.

SENATOR LIPPARELLI:

For the benefit of the 2023 Legislature, when it proposes this rate go to 2 percent, can we look back on this transcript and say that 2 percent is just pure crazy talk?

MR. AGUERO:

The brief answer to your question is "yes." The idea that this tax—and I am happy to say this for the record based on how it is structured—would ever go to 2 percent, would make it the single largest source of revenue we would have in the State of Nevada. I do not ever expect that will be the case.

SENATOR KIECKHEFER:

Mr. Aguero, what is the 0.163 percent multiplied against to reach \$250 million? Is that gross domestic product?

MR. AGUERO:

That would be essentially what was used to develop each one of those ranges. Remember, when I talked about the fact that we have all seen the schedule. Each one of those ranges is based on that revenue less those pass-through revenues we talked about, less the things exempt from the tax because they are already subject to a gross tax. For example, in the State of Nevada, that number is essentially applied to that base of overall revenue and that total revenue adjusted for the things that are included in Senate Bill No. 252. That is how you get to that figure.

SENATOR KIECKHEFER:

What is the tax base you are using?

MR. AGUERO:

I would say the aggregate base is roughly \$177 billion. The adjusted base is something like \$155 million. To the extent it would be helpful, I am more than happy to pull out my computer and have the exact number for you.

SENATOR KIECKHEFER:

To reach the adjusted base of \$155 million, have you gone through the excluded entities, like the pass-through entities and the similarly held entities and everything else that would generally be excluded from taxation under this, to back-out, ultimately, \$20 billion in gross domestic product?

MR. AGUERO:

We did our best to do that, but I want to be clear in terms of how we got to our estimates because there are a lot of questions relative to that. We borrowed from Texas in order to get our revenue. What is reported and what we know for the State of Nevada are things like our gross state product, our total number of employees and the total amount of income paid to people here in Nevada. We can then go to Texas and compare against their gross state product, their population, their income. That allows us to get a general sense in terms of what the size of our economy is here versus the size of the economy in Texas. It is simple and straightforward. We then take the gross state product in Texas. They do relatively extensive reporting relative to how much they generate in Texas revenue which is essentially the gross revenue available to taxation prior to the deduction for the cost of goods sold, the deduction for the cost of labor or the 30 percent. We can then compare those numbers for each one of the industries; construction, manufacturing, health care, leisure and hospitality, etc. We can identify how much Texas does in each one of these categories and how much Nevada does in each one of these categories. We can utilize that to estimate the size of the Nevada economy from a tax base standpoint. Essentially, we use gross state product in both Nevada and in Texas to do this. We can use total receipts from Texas, something we do not have for the State of Nevada, and apply a series of proportion calculations to say this is about what we think; if this is our gross state product in construction, this is what we think our gross receipts will be; if this is what it is in manufacturing, this is what we think our gross receipts will be.

In Texas, we also have all calculations that ultimately get to the margin and to tax liability. We can determine what the effective tax rate would have been if we had done all of those calculations for Texas. For example, if \$1 million in construction generated \$100,000 in taxes, the effective tax rate would have been 10 percent.

We next took each one of those effective tax rates and applied those estimates in the State of Nevada to get our starting point. We made adjustments where we had other information. For example, Texas does not have hotels and casinos, which represent a huge share of our aggregate economy. We went to things like the Gaming Abstract, and we tried to balance it. We used things like the Economic Census, the Dun and Bradstreet reports and NV Plan to balance that model to the best of our ability to create an estimate. That is the flow of the logic that ultimately got us to that differential.

SENATOR KIECKHEFER:

Is the total estimated tax base, within each one of the NAICS columns, truly an estimate at this point? We do not know how much taxable revenue in Nevada will be included in each one of those columns at this point, do we?

MR. AGUERO:

The answer to that question is absolutely, "yes." In addition, we also know that Texas is substantially larger than the State of Nevada. They manufacture more and utilize more of that in their state. They estimate that roughly 30 percent of the Texas franchise tax is exported. That is to say out-of-state companies that bring goods in and utilize the market in Texas are required to pay the franchise tax, just like someone who is located in Texas and sells those goods to people living in Texas. We manufacture substantially less. Therefore, the out-of-state piece coming in is something we have tried hard to estimate correctly.

SENATOR FORD:

Thank you for your presentation. Since you are talking about Texas, you mentioned manufacturing as well. As I understand, Texas has a more robust manufacturing environment than we do here in this State. They also have different labor costs. How did you control for labor

costs—if you are borrowing Texas data, with Texas labor costs different from Nevada labor costs—how did you control for that in order to come up with these estimates?

MR. AGUERO:

On the front end, manufacturing is much larger in Texas than it is in Nevada, but remember, we scaled it down based on our State's gross state product. Our manufacturing sector is also reflected as being smaller in the model. We made no attempt to adjust for the cost of labor, the cost of goods sold or the cost of transportation. To your point, that is a limitation in terms of the model we are looking at.

SENATOR FORD:

We asked yesterday, and I would like to reiterate, we would love to see the back data for these calculations.

MR. AGUERO:

Sure. I have shared many of the things we have worked on with your staff, and I will share anything they need relative to that so you can walk through whatever it is we worked on and improve upon it as necessary.

SENATOR FORD:

Fantastic. Thank you, sir.

SENATOR FARLEY:

We have only talked about taxes on businesses, and I know that is the Governor's decision. We probably all agree our economy is pretty fragile from a business standpoint. Why not look at sales and services and other forms of generating this money instead of on the backs of the people who are employing and trying to emerge from this economy? Why not if we are talking about stability and sharing?

MR. AGUERO:

There have been many conversations, not only in this Legislative Session, but in many that have come before. We were having conversations about the sales tax and services all the way back to 2003. I think you have all received at least one presentation relative to why we know our sales tax is among the narrowest base in the United States. To your point, about why not just expand it to include some services, fundamentally, the ability to expand it to services is limited because the sales tax, when it was originally enacted, was voted on by the people. Therefore, it can only be changed by a vote of the people, and the sales tax itself cannot be expanded to include services. That is the first problem we run into. That does not mean we could not create a companion transaction tax, which is essentially the same thing by creating what sometimes is referred to as a Nevada transaction tax. The economy is roughly \$175 billion in size. Right now our sales tax base is \$50 billion in size. We have \$125 billion worth of activity out there that is not currently subject to sales tax. Couldn't we find some of that and essentially expand the sales tax and maybe even lower the rate? If we need to generate \$250 million per year, why don't we go there?

The reality is, it is not an easy thing to do. It sounds great. It sounds easy, and it is something this State has to take up. I know there is a proposal to study that and to go through the exercise of getting that done. As part of the 2010 tax group, we tried to breakdown all of those services, everything not currently subject to the tax in the State of Nevada. We put them really into three categories. The first category includes what other states tax but we do not. Those are the things that are more progressive, such as discretionary services. There is a second category which includes things other states tax but are a little more difficult to tax; things like professional services. The third category, while it has been discussed, includes things I cannot imagine anyone would actually tax. I am talking about things like the rent on my home, health care, child care, those type of things. Imagining a sales tax of 8 percent on something like that would be hard to fathom, so we put that to the side.

As we think about what we do, it almost instantly gets subdivided into two camps. The first of those camps says, we should push a sales tax on the things consumers, the end-user consumers, traditionally buys. That tends to be unpopular. People do not like taxes that they actually pay.

Second is the fact there tends to be a lot of discussion about regressivity. If we think about the things we all use and the biggest tax base is there, a household that makes \$50,000 per year would have a tendency to bear a higher share of that tax than a household that makes \$150,000, not unlike the question Senator Lipparelli asked in terms of the size and the overall magnitude. As soon as the conversation goes there, people start to get concerned about exactly which services are going to be subject to the tax, and it tends to pivot over to the other side. When it pivots over to the other side, it changes to a discussion about the business-to-business transactions.

The tax foundation and others have come before you and said taxing the inputs of business is bad tax policy. There certainly will be some who will say a sales tax on business services would be good and lawyers, architects, engineers and all those types of service providers should pay; commercial laundry services and things like leases on commercial real estate, which is subject to tax in places like Arizona, should be part of the base. As soon as we start going through the exercise of imagining something like the lease on commercial real estate becoming subject to a tax, some business folks have a tendency to not like the concept of this expansion as much. There has also been some discussion about the Live Entertainment Tax, and whether or not actually services are being taxed. There is a lot of conversation there, but the reason for focusing on this alternative as opposed to that one, is largely because there is a need for equity in the existing payroll tax and the existing way that we do business. We also need to respect the fact that implementing sales taxes correctly is probably not going to happen during this 120-day Session.

SENATOR FARLEY:

The inequity on the businesses that pay the MBT did not actually get more fair. Now, businesses will pay both. It sounds like we did not explore it because people apparently are not going to like it as much because businesses are going to like being taxed this way. I am not being argumentative. I honestly want to know. Are there other states that have a sales tax structure? Like we borrow from Texas a lot. Could we go look at New York or California, which have a lot of tourism, and see what they are doing? Could we see if what they are doing would work in our environment? We had a really good tourist year, right? We had 40 million people or more come through. They were buying stuff. They were going out for dinner. They were entertaining themselves. I wonder if we are missing an opportunity to collect on the economy in a way where we are all really sharing it and not putting so much burden on some people.

MR. AGUERO:

Let us talk about those tourists for a minute. Over 41.1 million visitors came to Las Vegas; almost 50 million visitors. Almost every transaction those visitors did was subject to tax. They got in a cab from the airport to their hotel; that was subject to tax. They participated in gaming, and that was subject to a gaming tax of 6.75 percent. They checked into their rooms, and they paid a tax not to exceed 13 percent on those rooms. They went out to eat, and they paid a Clark County tax of 8.1 percent on everything they ate. They went shopping, and they paid a tax of 8.1 percent on everything that they bought. They went to a night club or they went out to see a show, and they paid a Live Entertainment Tax of somewhere between 5 percent and 10 percent, including in some cases, on food, beverage, and merchandise. It is an exaggeration, but it is almost impossible to find a transaction in which a tourist is not currently subject to tax in the State of Nevada.

SENATOR ROBERSON:

May I comment for the benefit of those on this Committee of the Whole? We had an extensive discussion about sales tax on services in the Committee on Revenue and Economic Development last month. The Tax Foundation came to town and testified. John Restrepo and Professor Alan Schlottmann testified. Many of us came in to this meeting being open-minded to the idea of a sales tax on services. I think consensus of the Committee by the time we got through with that discussion was universal that no one thought a sales tax on services was a workable or a good idea in the short-term. While the Tax Foundation supported a sales tax on services, they could not name a single state where it has been implemented effectively and worked as intended. I would say Mr. Restrepo and Professor Schlottmann were not supportive of

a sales tax on services, and they went through all their reasons. I would encourage any members here, today, who are not on the Committee on Revenue and Economic Development, to watch the video link to that meeting. You may have a different opinion on sales tax on services once you listen to the testimony. It is incredibly complicated; much more complicated than simply the Live Entertainment Tax, which we have been working on for years and still has problems. From my perspective, if you talk to every member of the Committee on Revenue and Economic Development, they would say that is not something that is feasible this Session.

MR. NIELSEN:

Senator Farley, I want to add that in looking at the different models from the Governor's Office, we did consider the services tax. There were really two issues. Chair Roberson hit on one of them. It is incredibly complicated; more than meets the eye, and from an administrative standpoint, we did not think we could get any revenue in year one. Looking at this proposal, we can get revenue in year one. The idea is the first year is the toughest year of the budget proposed by the Governor. That is why, as Senator Roberson alluded to and as the Governor has said, we are going to collect real-time data and come back here two years from now, not to request a business license fee and a services tax, but to make a more informed decision on whether or not a services tax would be smart, and what services to apply it to. The idea would be to buy-down the sales tax rate to level out the goods and services. We considered that. I want to reiterate that from the Governor's perspective. There were a number of problems we ran into.

SENATOR DENIS:

Based on the discussion we have had, this tax is an unstable tax, is that correct? Is that what I heard?

MR. AGUERO:

No, I would expect this to be among the most stable sources of revenue we will have in the State of Nevada.

SENATOR DENIS:

Do you consider this a long-term solution?

MR. AGUERO:

The answer to that question is a difficult one. You and I have had some discussions before. This tax is going to generate \$250 million per year. We all know the size of the State's budget. This \$250 million, while a thoughtful, careful and elegant step forward proposed by the Governor, is not going to solve the State's problems relative to the structural issues with our property tax or the problems with our sales tax. It is going to be helpful. It certainly looks more like our economy, and it does many of the right things. But, it is only \$250 million. If you are asking me whether or not this tax would be the one that maybe is the model for our future, I would say the answer to that question is undoubtedly, "yes." If you are asking me whether this tax is going to solve all that ails us from a tax-policy standpoint as a State, the answer to that question is absolutely, "no."

SENATOR DENIS:

That means we are going to have to continue having discussions about the other parts as we move forward?

MR. AGUERO:

Long after all of us are gone, Senator.

SENATOR DENIS:

I think Senator Lipparelli talked about this, but is this the kind of thing that we are going to need to come back to every two years and make adjustments?

MR. AGUERO:

There is going to be a period where we are going to have to make adjustments. I do not have any doubt. Senator Lipparelli had a fair question, "How many taxes can we look at that have not been adjusted over time?" Look at our sales, property, gaming and room taxes. They are all

major sources of revenue that have been augmented in one way or another. It is inevitable, not only as a result of tax policy, but because the economy is moving rapidly around us. Economic diversification absent fiscal diversification is going to be a problem for the State of Nevada. It already is because the lion's share of the revenue we get in Nevada comes from a single industry. If the economy continues to be relatively stable and its primary source is gaming tax dollars growing at a pace slower than population growth or at a pace slower than other businesses and we are taking the subsidy the industry provides in terms of gaming taxes, that lowers rates for businesses and tax rates for individuals.

We do not have a corporate or personal income tax. We are constantly going to have to deal with that because our history has given us among the narrowest tax bases in the United States, both in terms of our sales tax and our gaming tax. In addition, our property tax is designed to erode over time. We have talked about it and made changes to it, but it is going to be a problem for us. I would not let any of that diminish the value of Senate Bill No. 252. This is what we need to be doing. Economic Development told us yesterday this is a tax that does not hurt us from an economic development standpoint and it can level the playing field between capital-intensive firms and labor-intensive firms.

To answer your question, it will be required we tinker with it to make sure we have it right. Will it be adjusted over time? That is inevitable.

SENATOR DENIS:

Are you using Texas to create a forecast of what you think the revenue is going to be? If so, why Texas? Is it because they are doing something similar? Is there a chance that the prediction could be off?

MR. AGUERO:

To answer the first question, why Texas? The brief answer is because they provided the model used to calibrate our rates. It allowed us to think through the distance between the top end and the bottom end of the income statement margin. We looked at Ohio and Washington, and we looked at income taxes and other data, but we focused on Texas because they had the information. A lot of research and analysis by our firm and other firms, some of which the Chair talked about, was relative to the size of the economy. I take it from your and Senator Kieckhefer's question, the concern is whether we have the size of the economy correct? I am hopeful the answer is yes, not only because we have gone through an exercise that we believe to be the best, but because other analyses have been done and we were in the middle of the pack. Many were clustered within \$100 million one way or another in terms of what the liability would be. Some of the reviews in Texas, with regards to how we did the modeling, as to whether it was reasonable, left me with the feeling that we were close, if not conservative.

Could our prediction be wrong? There is an absolute chance we got it wrong. It will either be over expectation or under expectation. Chair Armstrong, yesterday, asked me what the potential was of it coming in over versus under. I said, based on what we know today, I would guess 75 percent chance of coming in over our projection and 25 percent chance of it coming in under our projection.

There will be a ramp-up period. That effort will be required of the Department of Taxation and will require nothing more than herculean efforts in order to get it done. I have no doubt the Department of Taxation is up to the task. In addition, one of the things about this particular alternative, in comparison to others, is the ability to get out-of-state firms that are availing themselves of our market to pay because they are generating revenue here, but it is going to take time to make them aware. Some reports have suggested how difficult that is to estimate revenues.

Looking back to the R. A. Zubrow, Price Waterhouse and the Governor's Task Force reports, with all of the challenges noted in each report, we either come up with the best estimate we can in terms of a new tax base or we get really comfortable with the existing tax base because that is the only one we are going to know for sure.

SENATOR MANENDO:

Do you think that this bill adversely affects the high-income low-margin businesses?

MR. AGUERO:

There are always going to be high-income low-margin businesses that have a potential to be adversely affected. I was given some degree of comfort yesterday, from Dr. Trimboth's analysis, where she looked at the margins of various businesses and how the lower rates were applied to the ones that would be high-volume low-margin. She talked about pyramiding, which I am not privy to in all those analyses. What I will tell you is there was a conscious effort to make sure the lower tax rates are on industries that tend to have higher volumes and lower margins. It is not going to be perfect. At the end of the day, if we are talking about one end of the spectrum where it is a pure gross receipts tax—essentially, a quarter of a percent or half of a percent, on everything—certainly we will be much better because we are not uniformly blanketing. If you are asking about whether or not we will be able to recognize it the same way a profits tax is, of course not. We are trying to find some equity between those two. My biggest concern is a situation with two entities within the same industry; one that is profitable and one that is not profitable. Certainly, the hotel casino industry—the gaming abstract provides information relative to how that industry has been performing—has had seven years in which the aggregate for the overall industry has been negative. There are some in there, however, that are positive and some that are negative. Using your question and applying this rate to an industry that has a negative margin, it is like an infinite tax rate and you always have to be thoughtful. There are good years and bad years, especially in industries like mining and tourism. While the brief answer to your question is, I have the same concerns as you. We have tried to take steps to mitigate that in a reasonable way.

SENATOR LIPPARELLI:

I am struggling with the concept of this being stable in that the way the tables are set up. It seems to me these movements within the tables subject this tax to vagaries of the market generally. As fortunes rise, the tax will perform, and as fortunes fall, the tax will do the same. I do not see that as stable. I see it mirroring the problem we have with the existing sales and gaming taxes we are trying to fix.

MR. AGUERO:

The first question is stability. Excellent point and you are right. If we wanted the most stable tax we could come up with, we would go right to the top line. We would have a gross receipts tax with no deductions. That is the widest possible base and the lowest possible rate. You are absolutely, right. The opposite would be if we wanted the least stable and the most equitable tax, we would go down to the bottom line. We are trying to find the middle. We are trying to balance the need for stability with the desire for some degree of equity. That is exactly what a margin tax of this caliber is trying to do. That is the reason why we adjust for cost of goods sold or costs of labor. Generally, companies fall into either costs of goods sold or costs of labor, and where they do not, they provide 30-percent standard deduction.

The second part of your question is about the instability we are seeing in sales tax and gaming tax. The instability we are seeing in sales tax is for a number of reasons. Our sales tax was created decades ago when substantially more was spent on goods as opposed to services. At the point it was created, nearly two-thirds of what we spent our money on was goods. Today, two-thirds of what we spend our money on is services. Nevada sales tax is applied only to tangible goods sold at retail, which means the tax base has continued to erode over time. This is why we have been creative about increasing our tax rate over time. It is different in this case because in Senate Bill No. 252 we will have the ability to evolve with changes in the economy. It is not specific only to services or only to goods and not services like our sales tax.

The question relative to instability in our gaming tax is, to me, different all together. What we have seen is that our economy has diversified away from casino gaming. We are making every effort to bring companies other than gaming companies into Nevada for economic stability. At the same time, we have also diversified within the tourism industry. We have constantly reinvented ourselves in terms of the tourism industry with eating, drinking, shows and tours. We are now the nightclub capital of, at least, the United States. We have found ways to generate more revenue, in different ways, to entertain the 41.1 million people that get in a car or on a plane and come to Las Vegas, Reno or Tahoe. This particular tax applies to 100 percent of those

revenues, not the portion only that is declining. It is more stable for the reasons I have pointed out. It is distinct from the sales or the gaming tax.

SENATOR HARRIS:

Early in your testimony you mentioned we have about 180,000 businesses in Nevada with no employees. What percentage of those are foreign or out-of-state companies that come here to incorporate for the tax benefits? We know we have a lot of companies that do that. As you factored this tax, did you consider that a percentage of those businesses may leave Nevada when the taxes become too high or they find other jurisdictions or venues in which they can conduct the same business at a lower rate because they are not paying the BLF tax? My concerns center around what happens if we do not collect enough? We have the possibility to have a shortfall with this tax. Do we then revisit our tax tables, or are we going to have to make up that shortfall through a new tax or maybe raising the MBT or some other method? At the end of the day, we are going to have to fund the Governor's education plan along with other things we need to do to modernize. The money has got to come from somewhere. If this tax is not going to generate the revenue we anticipate, we are then left with raising those tax tables or looking at other avenues for that income.

MR. AGUERO:

Let me start with the first piece, which is how the make-up of our economy looks. The Secretary of State's Office has what they call Title 7 and Non-Title 7 (NT7) businesses. There are roughly 307,000 that are Title 7 and about 30,000 that are NT7 entities. These are sole proprietors and general partnerships. There are roughly 330,000 thousand businesses that make up a whole universe of possibilities. The numbers do not all add up. The Department of Employment, Training and Rehabilitation (DETR) tells us that there are about 75,000 employer businesses. We can get a sense of that, and we can pull those right off the top. Numbers from the Economic Census or the U.S. Small Business Administration (SBA) reports that provide information on both employer/nonemployer businesses, suggest there are about 180,000 nonemployer businesses operating in Nevada. We add those up and understand the differential between those and the total universe of entities that are filed with the Secretary of State's Office. That is our universe.

We asked the Secretary of State's Office, to tell us how many of those have a nexus with Nevada, how many are actually operating here? They reported they do not know. I heard testimony from resident agents of estimates which leave me with the impression that if I add up the total number of employer businesses, nonemployer businesses—what the SBA, Economic Census or IRS tells us are out there—and the total number of businesses that the resident agents say are paper companies incorporating here, that number actually comes out to a number higher than the 330,000 entities. We never went higher than the 330,000 entities in order to be conservative.

Your second question regards what happens when we apply this new tax and companies leave or they do less business, making our economy smaller. We are always concerned about that. I did not go through the exercise of modeling how a \$250-million increase, in the way that we are looking at it, would result in a negative economic output such as a reduction in employment, economic activity, wages or salaries. At the same time, we did not go through the exercise of modeling how \$250 million spent on education, if effective, would increase employment, wages and salaries and make Nevada more attractive. I do not have an answer for that. Other analyses I have looked at and some of the testimony you heard yesterday have a tendency to be relatively close to one another. If we are able to make great strides relative to what is an incredibly poor education system, then there are likely to be positive economic implications. If we raise our taxes too high to where we are no longer considered a probusiness State, there are likely to be negative economic implications. I do not believe a \$250-million tax package that would go to funding effective tax policy would have negative implications. I am not going to say this will grow our economy or increase the businesses coming to our State because of things like Victory and Zoom schools. That may happen for some. We heard many anecdotal stories yesterday, I do not discount those, but I cannot tell you a whole lot more than that.

Your third question was about the shortfall. If we get it wrong, we are going to have to adjust. If we get it wrong because the tax base is higher, we may need to adjust it downward. If we get it

wrong because the tax base is too small, we are going have to evaluate whether the payroll tax, the BLF, sales tax on services or property taxes may be the better option. That is a question that is always before this Legislature, each Session: What do we do in order to have a fair and equitable, predictable and transparent tax system? Certainly, we have made every effort to get as close as we can, but again, we are left with the differential between the basket of alternatives we have which are known and the options that we have that are not known.

SENATOR HAMMOND:

You made reference to taxes. Obviously, you have done your research to try and figure out where we need to be with this tax. It would be helpful for me to have a bit more history on how you created your matrix. Can you tell me how long Texas has been doing this, and in the years they have been doing it, have they often encounter shortfalls, year to year? How long did it take before they started generating the revenue? As Senator Harris pointed out, this is important relative to what we are trying to do, here, in funding some of these programs for education. Will we be seeing any revenue in the first, second, third or fourth year, making it significant enough to do this?

MR. AGUERO:

It was enacted in Texas in 2006 and became effective in 2008. In the early years, they did not have the advantage we have of having a state come before them to help with generating estimates, and they underestimated dramatically. They had a substantial revenue shortfall and dealt with many legal cases due to things such as throw-back provisions which they later got rid of. Texas made adjustments to their rates to get where they are today. In terms of being over or under their projections in each year, I have not done a study to determine how well they projected their revenue source. I talked to a number of folks in Texas who said in the early years, it was difficult to figured out. In later years, they felt they were doing well.

Texas weathered the economic downturn better than other states. Their revenues during the economic downturn were more stable because Texas was more stable. They have been positive in terms of population and employment growth and have seen growth in gross state product. Besides a diversified economy, they have a magnificent education system, particularly, the higher education system, all of which has helped grow and expand the economy to make their tax base grow. While there may have been positives relative to that growth, I do not want to leave you with the impression that means I am going to expect we will see the same level of growth here.

SENATOR FARLEY:

Thank you for your answers on Texas because that was going to be my follow up. They do have a good economy, much better than ours. I appreciate how honest you have been in all of this. It is nice to get those answers.

I have a follow-up question to what Senator Harris asked regarding foreign corporations. My concern is typically they deposit their money in our local banks. If I were to move one of my LLCs to a state that did not have this tax, I would also move the money. I do not know whether that is another impact or if the banking industry has weighed in. Do you have any thoughts, or can someone get me an answer to that question? I think that would be huge to our economy.

MR. AGUERO:

I do not have an answer for that question, but I will make sure to circle back with some of the banking folks and try and get you an answer.

SENATOR DENIS:

In a question asked by Senator Hammond, you mentioned when Texas first started out they had some issues and lawsuits. We are obviously learning from Texas, and it may not be you who can answer this: have we anticipated if we were going to have similar issues with lawsuits, and do we need to take that into consideration.

MR. NIELSON:

There were a number of lawsuits in Texas. If memory serves me correctly, a vast majority of them were with respect to the deductions side of how their system worked. We took the

deduction component out of Senate Bill No. 252. There were a few lawsuits that were constitutional challenges, and Texas prevailed in all of those. To double check on the constitutionality of Senate Bill No. 252, we worked with your legal staff to see if it meets the constitutional muster, and we believe it does.

SENATOR DENIS:

There is nothing obvious that would be challenged?

MR. AGUERO:

We are not modeling in the expectations of lawsuits, but there will be questions.

SENATOR DENIS:

Thank you.

SENATOR FORD:

In reference to lawsuits and Senator Farley's question, last night, during conversations with the gentlemen who represent the resident agents, I asked about incentives within Nevada aside from the no-corporate-tax environment. They also like to avail themselves of our courts and our good laws in regards to business. Have there been conversations about these types of companies leaving? I have seen emails referencing \$40 million going out the door the minute this bill passes. This would drive a hole into everything we are trying to do. Have you had any conversations about this either before or subsequent to last night's testimony?

MR. AGUERO:

I have had conversations with folks including ones that are outside of the State. Businesses, including corporations inside and outside this State, have called me to say this is an excellent plan. They have also called me to say, as soon as this passes, I am closing up my doors and leaving.

I have had the opportunity to review the white paper that was prepared by the Resident Agent's Association. I am looking forward to seeing the detail that substantiates some of the claims provided in it. Upon my first review, those claims seem like aggressive assertions relative to what will happen in terms of all kinds of entities choosing to go where, frankly, they could already go if it was only about paying less. The point made yesterday is that those other places are becoming increasingly competitive. In the future, as new corporations, new partnerships and new entities of all forms go out there, we are going to make ourselves less competitive than we are today. On the other side, the minimum tax payment under Senate Bill No. 252 is \$400. It is \$400 whether you are an individual. It is \$400 if you create a holding company or some other type of special purpose vehicle, and it is \$400 if you are an out-of-state firm and you file. The idea was to make it as simple as possible by applying the same rate to every business that avails itself of the State of Nevada. If the business does not have employees, it will pay the minimum rate just like a nonemployer business that is operating here.

SENATOR FORD:

Thank you for the testimony. Depending upon what the data show, are you going to reassess and make adjustments to the charts in Senate Bill No. 252?

MR. AGUERO:

I do not speak for the Governor, and the marching orders I have from the Governor are, we are going to evaluate and take a look at all the information. If we do not have it right, we are going to find a way to make it better. Right now, the goal is to try and bring to you the most thoughtful package we can. To answer your question, I stand ready to serve the Governor and Senate to the extent there are changes that need to be made so we can do what is best for the State of Nevada. I will be here to do that for you.

SENATOR FORD:

I did not mean to imply the only thing foreign corporations come for is the free tax. Our court system is a decent one for them to pursue. How accurate are these emails I am getting? I would love to hear from you as soon as you hear back from them. I will be talking to them as well, but let us see if we can nail that down.

MR. NIELSEN:

Senator Ford, the Governor's Office, at this time and place, does not anticipate changing the rate payables in this bill. However, we are continuing to have Jeremy and others continually refine the yield to make sure it is as accurate as possible. At this point, we do not plan on submitting an amendment to change the rate tables.

SENATOR FARLEY:

I have a number of LLCs, not only for lawsuit protection, but for financial and trust purposes. It is one thing to say it is just \$400, but when a foreign company comes in, it is a massive map of complex LLCs. They are not just filing for one LLC. I sit here and count my LLCs and think, oh, my gosh! Not only am I paying the tax on the actual, like my construction company, I will now be paying all this additional tax on all the LLCs I use to protect myself. That is why a CPA tells me to move it to a different state because it is not just \$400, it is now \$3,000. Not only are you losing the tax revenue, but my biggest concern is for the banks. They too would lose the revenue that would have been deposited.

MR. AGUERO

To the extent a company has six, seven, eight, nine or ten LLCs as you said, they are structured that way to take advantage of both the market and the protections that are afforded to Nevada as a probusiness environment. I do not take your point lightly. I understand what you are saying. My only response would be that you have it right, and that is exactly how it works.

We have gone through the exercise of showing what is in Senate Bill No. 252 is not a corporate income tax, not a gross receipt tax and not a margin tax on the same order of Question No. 3 that was defeated in the last election. I would like to share how we got the structure as it exists. When we got to the exercise of looking at what the options were, the Governor asked for good tax policy, stability, equity, transparency and those types of things. We thought in terms of the widest type of base and the lowest possible rate. We started with the idea that the BLF for the reason that we talked about before which is because it captures the most businesses, certainly, more than our payroll tax does today. From that, we started by asking what would be the simplest way to do it. We took \$250 million or whatever the number was, then took the total number of entities and divided that by the 330,000 businesses. This was a bad idea on my part, for obvious reasons, because it essentially treats every business exactly the same.

We quickly transitioned from that to saying that as we have more revenue and we needed to increase the rate. We created seven or eight ranges from \$0 - \$500,000, \$501,000 - \$1 million, \$1 million - \$5 million, and so on, until we got to \$1 billion. We found when we did that, even if we made the rates increased—the lower range had a tax rate of \$300, one had, a \$1,000 tax rate, the next one, \$10,000; the next, \$100,000—whatever we did, we found we were building in the same type of fiscal cliffs people were critical of on Question No. 3. Remember the whole view of Question No. 3 was if you made \$1 million, you did not pay anything. If you made \$1 million and one dollars, you got hit with the full 2-percent tax rate, which was problematic. If the tax rate was \$10,000 for a business making between \$1 million and \$5 million, the effective tax rate for the guy making the \$1 million was roughly 1/5th of the tax rate for the guy making \$5 million. It was incredibly inequitable, and the Governor and his staff were concerned.

The next exercise we went through came after we realized we needed to have more ranges and those ranges needed to be tighter. We could not keep creating all these fiscal cliffs. We created a number of these range structures, one that had something like a 1,000 rows. We wanted to see what it would look like. The tighter the ranges, the more we could insure there were not differentials between businesses. We could increase the degree of horizontal equity as we were going through that exercise. What we found is when we used one with 15 percent range between the company on the low end and the company on the high end it created a balance. It made us feel the jumps were relatively reasonable.

As Senator Settlemeyer said earlier, it may not be perfect, but that is the how we got to where we are. At that point, we had used the midpoint from each of those ranges and knew what the overall size of the economy was, so we needed to determine the tax rate. We based that on the midpoint in every one of those discreet ranges. It was simple. One rate would be applied based on revenues. Bigger companies would pay more and smaller companies would pay less.

Until we went through the exercises and began to vet, we realized the result was not unlike the gross receipts tax. Because we had a single rate applied to every single industry, the low-margin high-volume business was again disparately impacted in a fee range as opposed to being impacted by a singular rate. The Governor and his staff said this could not be done and that we needed to come up with something better. We ultimately looked at each one of those industries and all of the industry data we were able to get from the statewide taxes. We went through the calculations and came up with ranges based on an industry's NAICS code and the general category in which the industry operates.

The Governor said yesterday there is no such thing as a perfect tax and there never will be. Were we able to achieve better stability than we may have today? Yes. We were able to come up with a more equitable alternative; one that looks more like our economy. It is one that will grow with our economy as opposed to eroding it like the gaming tax or requiring us to make changes to the sales tax.

SENATOR KIECKHEFER:

If you are looking for true vertical equity, why not just apply a rate against your marginal gross revenue.

MR. AGUERO:

You are right. If we were only looking for vertical equity, we would simply apply it all the way across and could increase it. We can talk about this in different ways in terms of horizontal equity versus vertical equity. Let us imagine a situation where two companies earn \$10 million a year. One had a margin of 5 percent profit, and the other operated on a profit of 1 percent. If we use the singular rate, you can imagine how the tax rate would be dramatically different for the 1-percent company versus the 5-percent company, depending on the structure of their industry.

SENATOR KIECKHEFER:

That is why, I am not talking about a single rate, I am talking about a rate applied directly to the person's taxable revenue without the steps. Recognizing the industry differences and maintaining the NAICS code differences and the different marginal tax rates applied to those, why did you include all the steps in the chart instead of just listing tax rates?

MR. AGUERO:

To be honest with you, it was a stylistic approach. Visually, we believed that it would be easier for a tax payer to be able to look at those discreet ranges and determine the rate. In addition, it would provide some degree of a cushion for a tax payer that if only their revenue increases within that 15 percent range, the tax does not jump into the next category. Of course, the opposite is also true. If their revenue declines within that 15 percent range, they are bearing that same rate as well. There were some structural elements from a fee perspective that seemed more appropriate. To your point, it could certainly be done the other way.

SENATOR BROWER:

A hypothetical has been brought up a couple of times, regarding a lawyer of a law firm that has Nevada clients and clients in Utah. The hypothetical is intended to be simplistic and the way it was described, as I understand it, is that the lawyer law firm would pay this fee on the work done for the Nevada clients and not the Utah clients. I think I know what that means, but I want to clarify what being a Utah client is in that hypothetical means. Does it mean the Nevada lawyer is doing work for a Utah client on a Utah-related matter, because the lawyer has an office in St. George as well as Las Vegas, or does that mean, even though the lawyer is doing work for a Utah client on a Nevada matter, maybe a lawsuit venued in Nevada involving the Utah client, that work in Nevada would not be subject to the fee because it is for an out-of-state company? Can you clarify that for me?

MR. AGUERO:

The tax is based on where the service is provided, where the purchaser is located. In the example of the person in Utah doing work in Utah that would be considered a Utah receipt and not a Nevada receipt for purposes of Senate Bill No. 252.

The second part of your question is about an attorney who is working in Nevada providing a service for someone in Utah. I would still consider the purchaser to be the Utah business. However, if that Utah business would be doing work in Nevada, such as developing an office building for example or some contractual work, those receipts from work by the Utah company being performed in Nevada, would be subject to the tax.

SENATOR BROWER:

Because they would be coming to the Nevada taxpayer for work done in Nevada? So whether it is a deal based in Nevada that the Utah client is involved with or a lawsuit venued in Nevada involving the Utah client, because the Nevada tax payer, the lawyer, is performing the work in Nevada, that would make it a taxable event?

MR. AGUERO:

No, I want to make sure I am clear because I think you just said it the opposite way. If I am a Nevada attorney and I am providing services to someone in Nevada, that is the simple example. If I am an attorney in Nevada and I did 100 percent of the services I provided for someone in Utah, that would not be subject to the BLF as it is currently provided.

If I had a situation where I was providing services to someone who was in Utah working on a project—to be honest a lawyer may not know the extent to which that service is being provided—it would be a question of where the purchaser is. In the context of a tangible good it is simple. Where I deliver that tangible good makes it either a Nevada receipt or revenue or a Utah receipt or revenue, however, you want to look at it.

You made the hypothetical more complicated by asking what happens if an attorney provides services to a client in Salt Lake City who then provides or is doing some project in Nevada. It would be my opinion, the service being provided to the purchaser who is physically located in Utah, would not be a Nevada receipt because it is being provided to someone in Utah. In regards to the extent to which the Utah company is now entering into Nevada, clearly, if it now retains employees, has agents here, or the attorney you just mentioned is working on a project, that would be revenue upon which the Utah company would be required to make that payment to Nevada.

SENATOR FORD:

I have to follow up with Senator Brower's question because maybe I am in the wrong section, but I think that question takes me to section 21 for purposes of calculating Nevada gross revenue. As I read section 21, specifically paragraph (f), I do not see the lawyer/client work situation described anywhere until I get to paragraph (f). This section says "the gross receipts for the sale of any services..." which legal services would be, "...not otherwise described in this section are situated to this State in the proportion that the purchaser's benefit in, this State, with respect to what was purchased, "i.e. the lawyer's services," bears to the purchaser's benefit everywhere with respect to what was purchased." Frankly, that sounds a bit confusing, and I am not certain how you are supposed to divvy up legal services provided to someone located in Utah who has a lawsuit in Nevada and therefore has hired me, situated here in Nevada. Am I in the wrong section?

MR. AGUERO:

No, I am thinking you are saying it right. My understanding was that you are providing services to a Utah firm. To the extent you then came into the State of Nevada and had a service that was provided, you were an entity that was both in Nevada and out of Nevada. I then think the answer to your question would be you would have to apportion it based on the share that was in Nevada versus the share that was out of Nevada in terms of those receipts. I understood the hypothetical as it was asked related solely to providing services to someone physically located somewhere else for that service.

SENATOR FORD:

Presuming I have changed the hypo, maybe you can help me with that question. How would you propose we come up with this number or a proportion? The situation he described was not different from what I just described. You have a lawsuit in Nevada, but I am a Utah company

and the services are being provided in Nevada. Now, I need to determine what the proportion of the benefit was to the person in Utah who has hired me? I am a little confused.

MR. AGUERO:

Okay, I must have misunderstood the hypo, if I did, I apologize. If what you are saying is, I am a Utah company that has hired a Nevada law firm to come in and defend it in Nevada, then to me, that is clearly an activity taking place in the State of Nevada. I do not think there is any doubt about that. The point I was making is, to the extent a service is being provided to someone solely located outside of the State of Nevada, the service is provided outside.

SENATOR FORD:

I'm not suggesting you misunderstood, maybe I misunderstood, and I am trying to get an understanding as you speak right now.

MR. AGUERO:

I think we are saying the same thing now, so I appreciate it. Senator Brower, if I misunderstood your question, or I did not answer it correctly, I would certainly be willing to do that.

SENATOR BROWER:

It may be a semantic issue. We can take it offline so we can move through the rest of the testimony.

SENATOR GOICOECHEA:

We are going to shift gears from lawyers to cows, agriculture commodities, hay, cattle and whatever. Say I sent a thousand steer to a ranch in California. The point of sale is in California, and that is where they were received. Technically, how much of those receipts are taxable in Nevada?

MR. AGUERO:

To the extent those sales occurred to someone in California, those revenues would not be subject to Nevada tax.

SENATOR GOICOECHEA:

That really concerns me because of the impact it could have. We are going to make cheaters out of everybody before we even start. The other side of this pertains to livestock auctions. Everyone will go to Twin Falls instead of them coming to Fallon even though they are only avoiding a couple of hundred dollars. If they were sold in Fallon, as the point of sale, you would have to show receipts as a Nevada sale. If you send it to Twin Falls, there are no receipts. This also applies to the hay market, onions and garlic. It is not going to be huge but will impact the egg sector.

SENATOR HARRIS:

Not to beat a dead horse, but I want to ask the lawyer question in a health-care context. Say there is someone vacationing in Nevada who needs to go to the doctor, and that service is not of any benefit to them in Nevada except to fix their pain. They leave and take themselves back to their state, and they get the life-long benefit of that service. Is that taxed in Nevada?

MR. AGUERO:

Yes.

SENATOR HARRIS:

So, if that is the case, then why would the work being performed in Nevada by a Nevada lawyer for an out-of-state company not be taxed as Nevada revenue?

MR. AGUERO:

Because the purchaser, at that time, was physically outside of Nevada.

SENATOR HARRIS:

Okay.

DEONNE CONTINE (Executive Director, Nevada Department of Taxation):

Good afternoon. Yesterday, I gave a rather lengthy presentation. I want to touch on a few key concepts and sections in the bill and identify some additional resources that we provided that keyed in on some of the sections that were getting questions yesterday.

What is a business and what is not considered a business is defined in section 3 of Senate Bill No. 252. I provided a handout, today, that has the information about what a business is not. It goes through each one of those items and provides a short summary. Those are directly from section 3 of the bill.

Once it is established you are a business, you are required to have a business license and under Senate Bill No. 252, you are required to pay the Business License Fee on your Nevada gross revenue. The definition of revenue and Nevada gross revenue are in sections 5 and 6 of the bill with the rules we have already been talking about in section 21 on how to situs or apportion revenue to Nevada. Once you discover your Nevada revenue, you go to the charts on pages 15-34 in the bill, and find your industry code. There was some discussion yesterday about the NAICS code and the industry code. As I mentioned yesterday, the Department and the Secretary of State, in collecting information from license holders, currently requires businesses to provide their NAICS code when they register with the Department. They are required to provide that online in order to pay for the Business License Fee. A business would determine its industry NAICS, go to the chart and the table, look at its revenue, find where that is in the chart and then look at its fee schedule. The fee is paid quarterly, and it is due 45 days after the end of the quarter.

SENATOR ROBERSON:

Ms. Contine, this might be a good time to answer Senator Settelmeyer's earlier question.

MS. CONTINE:

Ms. Vallardo's questions had to do with revenue and determining gross revenue. Sections 5 and 6 and the rules in section 21 deal with that. That is where a taxpayer or fee payer would go to determine their Nevada revenue.

In regard to the question about using the State fiscal year instead of the federal taxable year of the business, we are attempting to collect the tax on a quarterly basis. We collect other taxes in this same way. It does not make a difference if it is a calendar or fiscal year. It is a quarterly fee. If the question relates to the extent different businesses have different fiscal years, in doing the model, the revenue calculations were based on the estimate we would be collecting in the first quarter of the next fiscal year, and we would collect amounts for every quarter thereafter.

MR. AGUERO:

That is correct.

MS. CONTINE:

I think that answers the question about the quarters.

SENATOR SETTELMEYER:

Wouldn't we want to have money coming in throughout the year rather than at one time? We have seen how well it works in this building to have all of the legislative bill drafts due the same day. Why not spread it out? Why would we do this quarterly when with sales tax if you have a de minimis amount of money, you only do it every year? We are spending about \$27.50 on sending these forms to Arizona to be processed. Why we take \$27.50 out of it for \$100 four times a year? As Senator Goicoechea indicated, both he and I would probably pay \$100 a quarter because all of our sales are out of the State of Nevada.

MR. AGUERO:

I can respond to the model, but I think you are asking a broader policy question. I did not try to model the cost of sending it to Arizona that you are referencing. The model is annual from my perspective, and we tried to generate the revenue. We were always concerned about how quickly the Department of Taxation or another agency could do the collecting and reporting; whether we have four quarters or three quarters in our first year. From a modeling perspective, I was concerned about what our total revenues were and how quickly we could expect the Department

of Taxation to be able to collect them. From a modeling perspective, it does not make a difference if the quarters are fiscal, calendar or otherwise. It does not matter.

MS. CONTINE:

With the Sales and Use Tax, we have the ability for smaller businesses to pay annually. If it is more of a burden for them to pay quarterly, we can certainly look into that for this as well. We will see if we can make this more in line with how we do the sales taxes for the smaller businesses.

SENATOR LIPPARELLI:

This was one of the fundamental questions that came to me about how this was structured. If we assume there are 180,000 small businesses without employees, that equals 720,000 actions a year that will come to your Department. Let me take a hypothetical and pull one from section 25 that relates to utilities. If I fell on line 10, I would be roughly making \$400,000 a year. My choice would be to pay \$528 because that line item is \$132 paid four times a year. I would pay \$528 a year and would file four forms and follow the prescription in your document that says I will file forms as prescribed by the Department. If there are 180,000 businesses that have the option of writing one check for \$528 versus following all of the rules and being subject to an audit, I would just pay the \$528. If we go to all of the 300,000 businesses, your Department will process 1.3 million actions a year. If we wipe out more than half of these by giving an either-or option that allows a business to file pursuant to their table or write one check for the \$528, I am not sure there is anyone who would not write a check for the amount due rather than be subject to reporting quarter after quarter and be subject to your audit requirements. I am concerned about small businesses. This requires accounts and attestations and is not insignificant. Is this possible to do, or is it being contemplated in the conversations you are having?

MR. AGUERO:

I will leave it to Ms. Contine to discuss what is possible. There are lots of conversations relative to ways to structure this to make it more efficient. To the extent there is concern, we will do that. We are trying to manage cash flow for the State and at the same time trying to make the tax base as wide as possible and allow everyone the opportunity to participate.

MS. CONTINE:

When we were talking about the collection process, the intent was we would have a three-month period and the revenue would be booked however it was booked by the company. They then would have 45 days to file the return and pay the fee. If we did this on an annual basis, where a business realizes the revenue, then pays a fee, we would essentially be waiting until the end of the year.

SENATOR LIPPARELLI:

I will change my hypothetical to say I will pay you \$132 a quarter.

MS. CONTINE:

I do not understand your question.

SENATOR LIPPARELLI:

The model, if I am understanding it correctly, creates categories from 1-10, that is a business that goes up to about \$500,000 in almost every case. I am saying, let us make their life simpler and go back to a flat fee that removes all of that bookkeeping and all of that audit risk along with 720,000 actions in your Department from paper coming in and going out. I think we are walking over dollars to pick up dimes.

MS. CONTINE:

I have a couple of thoughts, and they are not barriers that cannot be overcome. To the extent a business has cyclical revenue, are you asking if they would need to make an upfront payment for the entire year?

SENATOR LIPPARELLI:

No, I am saying they will still make an attestation and pay the fee. You need to pair this with what you will create as a department and what you will require of businesses. When you say generically something will be filed on forms prescribed by the Department that worries me. That is going to be a form no one knows what it looks like, what is included or what is going to be excluded, and someone has to process this form. I am talking about making this easy. I know small businesses will spend \$132 a year processing those forms.

SENATOR KIECKHEFER:

I think the problem is that people are interpreting this as an annual fee. It is not. In this bill, it is a quarterly fee. You are not paying an annual fee. You are paying a fee based on the immediately preceding quarter of your business' work. You could not pay for the next four quarters because your books would not be able to tell you what the quarterly fee is for two quarters down the road. The confusion stems from the fact it was originally discussed as a yearly fee, but it is written in the bill as a quarterly fee that is due 45 days after the end of the business quarter. Is that accurate?

MR. NIELSEN:

That is accurate. In response to Senator Lipparelli's questions, this is how the Modified Business Tax is administered right now. It is a quarterly tax type. Sales tax is administered monthly with certain, small exceptions such as allowing quarterly filing if sales are less than a certain amount or annual filing if sales are even smaller or if there are zero returns. We are open to relieving some of the administrative burden, not only from the government side but also from business side, to having these small payers pay annually. It is designed to be a quarterly tax type so I do not believe we can have everyone do this. But, for example, for some of the small, nonemployer businesses that pay \$100, paying \$400 up front or at a mid-point in the year would cut down on the number of transactions.

It is now administered online through the Secretary of State's Business Portal. There is an infrastructure in place now. It is not just a form that is sent in. We envision this to be an automated process. We do not envision it to be one where paper forms are sent to Arizona as Senator Settelmeyer referenced earlier. Once a business is in the system and a NAICS code established—and we have the NAICS codes of every business in the State—a number for Nevada gross revenue would simply be entered, the fee determined and the fee paid. I may be being overly simplistic, but this is how we envision it being administered.

SENATOR LIPPARELLI:

Immediately preceding this question we talked about allocations of revenue, so this is not as simple as you might say. All I am suggesting is, if we gave small businesses an either-or option, it is still attestation and they are still on the hook for 100 percent of the taxes, but anyone who has run a business here, given an either-or simplistic option, would pay it. It is easier to pay a fee and attest to it; I would pay the \$528. It is easy. I would just pay it.

MR. NIELSEN:

Perhaps, we can talk about this more in the future.

SENATOR SETTELMAYER:

The simple solution on that aspect may be what we developed when it was on the sales tax question, which was a bill I had eight years ago. After filing four consecutive zeros or minimums, after a year, if you turned in less than \$1,000 the previous year, you could go to filing yearly. This could be a possible solution to the problem just like we did with the sales tax. This brings up another question. If you do not have a form and are going to do this electronically, will it be like the IRS where you would have electronic access to my bank account?

MS. CONTINE:

We will have a form. There is now a form to apply for the Business License Fee. That process will still exist, but in addition, Senate Bill No. 252 will create a mechanism for quarterly reporting. There will be a form where gross revenue is reported. The form will calculate your fee

if you are doing it online. You will have to provide this quarterly. Your point about businesses with a low payment every quarter is one we can think about to determine how we can best serve that type of payor. We are open to ideas, but there will be a form.

The administrative provisions of the bill are those the Department of Taxation applies with respect to taxes we currently administer. I can go through those or answer questions.

SENATOR GOICOECHEA:

How will you complete the audit process? How will you determine how items will be taxed? Typically, agriculture tends to be cyclical with receipts coming in the fall of the year. What will you use for an audit? Will you ask for Schedule F or will the business sign the affidavit and determine where they fall? What are you going to use as a mechanism to audit?

MS. CONTINE:

In our Compliance Division, there are two components. One is education. Initially, with these provisions and a new program coming online, education will be a big part of this for us. We will be preparing the materials, making sure taxpayers have information and giving presentations we regularly give now for Sales and Use Tax, Modified Use Tax, and including this with those presentations.

We are not asking for any new auditors in the first biennium. We would look at many of the same things we currently look at for Sales and Use Tax—Modified Business Tax is a little different—such as records based on gap standards, general ledgers, invoices and the type of information kept in a business to identify revenue. I do not see it being different than what is kept for a business in general. There are no secrets or hidden things we will be looking for. It is like a regular audit we would do. It is not the sales tax, so we would not be looking at the return or sales tax ledger records, but it would include the documents kept to indicate what revenue is.

SENATOR GOICOECHEA:

I am struggling with the small businesses. If you do not have a sales tax number or any employees, or if you have employees who were partners or contractors, it would not show. A business will file an affidavit and make a best "guesstimate," and for the most part, these will be very truthful. You will need something you can audit however, and if you ask for a copy of a Schedule F or IRS documents, it will get problematic. Those would be the surest form of documentation, but I just want to make sure those are not in there.

MS. CONTINE:

The Department, in auditing this program, would have to determine revenue. It would have to be able to determine how the business determined revenue. If that involves looking at the Schedule F, that would need to happen. Taxing agencies, whether at the state or federal level, have agreements with other agencies. We can talk more about how to make this easiest for the taxpayers in your industry and the Department to work together to do this correctly.

SENATOR GOICOECHEA:

We have 180,000 people in this category, and they are not going to be receptive to opening their books to you for \$100. We need to be careful how we define the audit process.

MS. CONTINE:

The categories where there are no wages or out-of-state entities will be charged a \$400 fee. It is only companies that have a revenue calculation that we will need to do that.

SENATOR GOICOECHEA:

There might be instances where you would pay three quarters at \$100 a quarter then jump up to a higher level in the fall quarter and owe \$300 to \$400. That is the nature of the industry. You need to define what you are going to do in order to avoid push-back.

SENATOR FORD:

Yesterday, I asked you to give me examples of what is not a business and this exhibit is helpful. I have a question about section 8 regarding pass-through revenue. In section 8, paragraph (a), it says, "...revenue received by business that is required by law or fiduciary duty

to be distributed to another person or governmental entity." Is this like an escrow company or an escrow agent? I do not know these terms.

MR. AGUERO:

That is a possibility. It could also be a major corporation, for example Bechtel, that has a federal contract they have to pay out to someone like UNR or UNLV. That would be contractually obligated by law or fiduciary duty.

SENATOR FORD:

Can you please give me written examples of what is meant by pass-through revenue and what the definitions encompass?

MS. CONTINE:

I will do that for you, Senator Ford. One of the questions Ms. Vallardo asked yesterday concerned a revocation process with respect to the business license and notification of the Secretary of State that if the entity was a corporation incorporated in Nevada that the Secretary should revoke the charter. I drafted an amendment to create a process for this. We have a process when we are going to revoke a sellers permit that includes a hearing where the person can come and tell us why we should not do so. That process is appealable to the Nevada Tax Commission and ultimately to the Supreme Court. This was an oversight in the original bill and was addressed in the amendment drafted yesterday.

SENATOR HARRIS:

How will we separate the business license required by the Secretary of State, from the Business License Fee that will be administered through the Department of Taxation? Currently, if a business chooses not to renew their license, they go into a default status. They can do this for a couple of years before receiving a revocation on the Secretary of State website. What will happen in terms of enforcement if there is a company that wants to go into default on their business license and there is now also a tax that needs to be collected? Will you be proactive in terms of first pursuing the businesses that do not refile for their licenses then tell you they are exempt from the tax because they do not have a business license? The way Secretary of State's Office works, could they then renew their business license two years later and pay that fee without paying the taxes?

MS. CONTINE:

The bill envisions all of these functions will be transferred to the Department. The difference is, when a request for a business license is made and a business registers, there will not be a fee. Notification of application for a license will be made at that time. The business will then get information from us about their responsibilities. Today, a business license can be applied for via the Secretary of State's Portal and a \$200 fee is paid when that occurs. We will try to continue that streamlined process. When a business is going to the Portal to register or perform other functions, they will still be able to do that, they will just not pay the fee there.

We currently receive data from them on a regular basis about those who have applied for a business license. If they are a certain type of tax payer, we automatically register them for the modified business tax, so there is already some of this that goes on between the portal and the Department. We anticipate maintaining this relationship. We just need to determine how sending the information over without collecting the fee can work. We are working this out with them. A business could be able to apply for a business license through the Department, the Portal or at a Department of Taxation Office. If a business chooses to do it the way it is done now, we will get the feed. They will just not pay the fee. Once we know the business has registered, we will send the information regarding the quarterly fee.

SENATOR HARRIS:

So, a business will not pay a fee but will still be able to get a license downloaded through the Secretary of State's website, correct, and you will collect the tax?

MS. CONTINE:

That is correct.

SENATOR HARRIS:

Are you going to be fairly aggressive in going after businesses to collect that tax? Have you identified how you will collect it if a business decides to surrender their license through the nonpayment of a renewal?

MS. CONTINE:

There will not be a renewal process. This will be more like a seller's permit. If a business is a retailer, they have to get a seller's permit from the Department, and that comes with a small fee. That permit gives them the right to be a seller in Nevada. In addition, they have to collect and remit the sales tax every month or year depending on sales. If they do not, we can revoke their seller's permit, and we currently do this. This is the concern raised by Ms. Vallardo—a lack of due process—yes, we can revoke a business license. If we revoke them and they are a corporation that files with the Secretary of State, we can tell the Secretary of State to revoke their entity status. That is how we will operate here as well.

SENATOR ROBERSON:

Mr. Aguero, would you now please address Senator Settelmeyer's questions?

MR. AGUERO:

The first question was about section 4 of the bill regarding fiscal years versus calendar years. I think we have already discussed this question relative to the purpose. I have read Ms. Vallardo's white paper and listened to her testimony. I have tried to work on solutions, but I have not had the opportunity to talk with her personally although I have every intention of doing that. We will want to include any changes based on that conversation.

Section 20, subsection 1, paragraph (l), relates to the question of interest being included. This section specifically states interest is not included. Interest income, other than interest on credit sales, is excluded. If I buy something on credit and there is a finance charge associated on it, that interest would be included.

Another question was about disposal of a capital asset by a company. For instance, I sell a business or a company that has tractors. The answer to this is found in section 20, subsection, paragraph (n), where receipts that are capital assets as defined by the IRS Code sections 1221 and 1223 are discussed. IRS Code section 1221 is the definition of capital assets; property used in the trade or business. IRS Code section 1223 discusses property used in the trade or business and involuntary conversions. Both deal specifically with the concept of capital assets and are removed for purposes of determining what is Nevada revenue under this levy. There are other provisions for banks. They would pay on the interest but not on the principal, but in this case, the interest on the credit sale is out.

A third question was about unmanned aerial vehicles (UAV), a new innovative business that is out there, and how this would be defined. I struggled with that one, and then, it struck me. It depends on what the UAV is doing. It could be delivering something. It could be providing surveillance. It could be suppressing a fire. I have seen many things done with this technology. If I am manufacturing an UAV, that would be a manufacturing industry. If I am using it for transportation, that would be transportation, etc. It depends on the ultimate purpose for which the UAV is being used.

MR. NIELSEN:

After talking to Director Steve Hill, I found out there is currently not a NAICS code for businesses relating to UAVs, but one has been applied for and will be available soon.

MR. AGUERO:

Under section 21, subsection 1, there were a few questions. The first was about the basis an auditor would use to determine gross revenue. I will not revisit the conversation we have already had but will say the definitions provided in the bill related to revenue will be used by the auditor.

Another question was about the lack of apportionment in the bill. This was purposefully not included. We defined what Nevada revenue is so we do not have to go through an apportionment process. This was designed to make it simpler.

There was a question regarding transportation. Specifically the question asked what records the Department would require to determine what the origin and destination were in the State and

if the original destination was outside the State or if drop-offs were made in the State? Respecting the fact, we took the revenue definition from Ohio as opposed to Texas. We took the concept from Texas that if a point of origin or a point of destination is in interstate commerce, it will not be included as a revenue in Nevada. We will only use it as Nevada revenue if it starts here and it ends here. There was a lot of discussion yesterday about transportation, but at the end of the day, this is designed to be pro-Nevada relative to the transportation industry, and that is why it is included in this way.

There are inferences this tax will be used for education. However, section 14 of the bill states it is deposited in the State's General Fund. Mr. Nielsen talked about that fact. We can debate if we want to have earmarks in Nevada or not and how we use revenues. Those are policy issues.

The question on section 19 was about constitutes "primarily engaged" in a business. Is it revenue received or the expenditures made in conducting that business? Some of this was clarified yesterday, but it would be based on the revenue activity not on the expenditures that were occurring.

In sections 23 through 49, the question was asked about the formula used to create the differences between rates in the NAICS code and the tiers. We walked through this at the beginning of this conversation, and I will not review it again.

In section 30, there was a question about an the definition of an unmanned aerial vehicle, and that has been answered in terms of its use. I was also encouraged to understand Nevada is at the forefront of defining this emerging industry. I think that is an exciting thing.

The final issue mentioned in the Taxpayers Association brief was whether the Secretary of State would be putting a due process procedure in place, and Ms. Contine has discussed this. Our goal is to address all of the issues of the Nevada Taxpayer's Association.

SENATOR LIPPARELLI:

On page 10 of the bill, line 22, relates to a subject Ms. Vallardo brought up. Of all of the issues, this one gives me great pause; the definition of "primarily engaged in." In my former life, there is an ongoing battle with restricted versus nonrestricted, and it was three little words that, to this day, are still be bantered about to determine what this means. For example, what is IBM's primary business? How would you go about, throughout a year, slicing Nevada revenue out of your business and then determining from quarter to quarter what business you are primarily engaged in if you are selling hardware, software licenses and providing consulting services? I can see myself in all three of these categories, and I am not sure if this goes to your point of apportionment, but it is one of the biggest questions I have about the bill.

MR. AGUERO:

To make it simple, we would look at where you generate the majority of your Nevada revenue. Whichever one of those categories you were talking about, depending on which one was greater, that would be your category. One of the things we have is the fact Nevada Department of Employment, Training and Rehabilitation has an employer database under which most companies have a NAICS code assigned to them. There is a provision under which if a business feels the code is not correct, they can petition the Department and determine the proper code for their business. We could all come up with examples where this would be complicated and complex. I have spoken to large organizations that are complex that have manufacturing, retailing and other functions. We have discussed the issue of this being based on what their Nevada revenue is. We were able to work through this by using where the revenue is primarily generated as the basis for the NAICS code.

SENATOR DENIS:

Shouldn't most businesses already know their Nevada NAICS code? I have the same concern about some of the technology companies because they can do things across the Country and across fields. Is this creating something more for them to do? It seems the form is easy enough to fill out.

MR. AGUERO:

I have probably spoken to at least 100 companies and gone to the DETR database to look up their NAICS code to see how they are defined. I have yet to have anyone tell me the code is

incorrect. There are companies for which this will happen, but we are going to look at the common-sense test. If this is what you sell, you are in the business of selling that. If you provide health care, you are a health care provider. If you sell cars, you are a retailer. If you provide hotel rooms, you are an accommodations' business. For the vast majority of businesses, it will be clear. It is the 1 percent that will be complex, and we will have to work through those.

SENATOR DENIS:

My question, again, was, don't they already know what their Nevada income is?

MR. AGUERO:

Businesses today are required to know how much their income is in very discrete ways; how much is their Henderson income versus how much is their North Las Vegas income for example. The idea a business would not know its Nevada income versus its California income is not a novel approach relative to allocation.

SENATOR FARLEY:

My CPA just sent me some information on how this would impact me personally. With my Nevada \$5 million in income, my companies will each have to pay the \$400. For the scheme of companies that will have to pay this \$400, it will cost me \$2,800. To accurately audit and ensure I am turning in correct revenue per company, my CPA said to budget \$1,000 per quarter for bookkeeping. I am now looking at \$7,800 for the year if this tax is in place, and that does not count the tax itself, which is not that bad. It is the unintended consequence that has impact. This is just one scheme. I also have a supply company that will be impacted. When small businesses talk about the impact, this is what they mean. It is not just the tax.

MR. AGUERO:

I sympathize with you. If I understand your situation, you will be paying \$7,800 on \$5 million in total revenue is that correct?

SENATOR FARLEY:

I will pay \$4,700 dollars on \$5 million in revenue but will pay roughly \$7,800 to pay to get the taxes done. I have a corporation, and because it is in the construction industry, I have several LLCs to protect my company and my revenue. If you take that, it is \$2,800 based on the \$400 fees for each of those companies. Because we move funds through these differently and to ensure I am paying correctly if I am audited, my CPA said I should budget about \$1,000 a quarter so they can make sure I am paying this and processing this correctly. I will pay the \$4,700, then an additional \$7,800 to cover the implications of this tax.

SENATOR KIECKHEFER:

We heard a lot about the modified business tax in previous hearings. We also heard about the low percentage of businesses in our State that pay that tax. Tax collected by these entities is considered pass-through revenue. Was there ever consideration given to providing credit or deduction for Modified Business Taxes that are paid in the course of doing business, as a deduction from the gross Nevada revenue?

MR. AGUERO:

No, that is a tax paid by the business for the business. If a retailer sells \$100 worth of goods and charges \$108.10 for those goods, he only pays on the \$100, not on the tax being collected on behalf of the State that someone else is paying. That is removed. You are asking a question of whether property tax or MBT—my payroll tax—if I could take some sort of credit or deduction?

There have been many conversations about how these might interplay, but in this particular regard, it was intended to be a wholly separate, stand-alone levy.

MS. CONTINE:

I would like to point out there is a section in the bill that is like a mini-amnesty program . It prohibits the Department from assessing any penalties or interests or revoking a business license in the first year if the taxpayer is attempting to comply despite their using ordinary care if they are not being willful or not purposefully trying to avoid it. There is some protection for the first year or so to make sure people are properly educated and have the information they need.

SENATOR ROBERSON:

I am going to close the hearing on Senate Bill No. 252 and open the meeting up for public comment.

VICTORIA CARREON (Director of Education Policy, Kenny Guinn Center for Policy Priorities):

Thanks so much for the opportunity to testify. The Guinn Center supports the proposal because we believe it contains many elements of sound tax policy. First, we think the rates are low, and in our analysis, we have shown the combined rate of the Business License Fee plus the Modified Business Tax is much lower than the margin tax that was proposed for the 2014 ballot. Second, the tax is broad-based and expands the revenue base. In addition, it avoids much of the cliff effect that has been in other tax proposals. While we believe it has some elements of good tax policy, we have some recommendations to ensure the rates meet the State's tax policy goals and the desired revenue is received.

First, we think the Legislature should pass legislation, even before the plan is approved, to require that large companies file an informational return for the first quarter of 2015 and submit it before June 30 so you have much better information about the gross receipts. There has been talk about other states, about how when they implemented new gross receipts taxes, how much less the revenue was than was projected. We think getting information in advance would be helpful. They tried to do this in Texas, and even with that, they still had receipts much lower than projected. In Nevada, as you know, we do not have data on gross receipts at all, so it would be helpful to get this data.

The second thing is we think the rates should reflect the relative profitability of each industry. In our analysis, when we took the rates being proposed and put them next to the profitability on a nationwide basis for each of those industries, there was no correlation mathematically. We think the rate structure needs to be looked at to figure how you can model the relative profitability—still taxing the gross receipts—of each of those industries. We also think gross domestic product should be taken into account, and you should look at how much revenue is projected to be brought in for each of the industries to see if each relative share reflects their share of the gross domestic product of the State.

Given the complex structure of the rates, we think there are some advantages to having a single rate, especially at the beginning or in having a much more limited schedule. You may want to also consider having some targeted rates you phase in over time. We think it is important, given the uncertainty of the revenue, to create some corrective mechanisms, something that will enable you to easily make changes if the revenue is not meeting the revenue goals or it is affecting some businesses disproportionately in an unintended way.

The other thing we recommend is you phase out the Modified Business Tax. It does disproportionately affect the companies that are human-capital intensive. In the end, I think you want to have a single tax, and in the meantime, if you have the two taxes at once, you will want to look at the combined impact of the Business License Fee and the MBT. In our analysis, when we looked at, for example, a small medical practitioner, they would be taxed at a rate of 0.028 percent under the BLF, but when the MBT is added in, the effective tax rate is 0.607 percent. Given that you have those two taxes going at the same time, you have to look at the combined impact and see if that meets the policy goals of the State.

We think that the Legislature should consider whether or not the revenue should be specifically marked for education.

In conclusion, we think the Legislature should ensure any tax reform proposal helps move Nevada's tax base and improve the tax base. You should be asking, "Does it move Nevada away from industry-specific taxes or sector-specific taxes? Does it broaden the State's base and lower rates? Does it address inequities, hyper-volatility and over-dependence on key industries?"

Finally, combined with Nevada's existing tax structure, you should be asking: "Does the tax plan serve to simplify and broaden the State's overall tax code?" We hope our recommendations help the Legislature develop sound tax policy for Nevada's future.

DAVID W. CARTER (Nevada Legislative Action Committee):

I am president of the Nevada Legislative Action Committee, and I have some comments on what I have heard today. The definition of insanity is trying to do the same thing over and over

again and expecting a different result. Most of my comments are related to the question whether this income is needed or are there better ways of cutting the budget.

As I understand it, most of this money, or all of this money, is supposed to be for the Department of Education. The U.S. Department of Education has been a failure for close to 40 years and No Child Left Behind was a failure. According to Federal Department of Education regulations, by now, every student was required to be testing at the proficient or advanced level. The only way they were going to do that was to lower the standards. Waivers for these standards were awarded on the basis of accepting Race to the Top funding, which also required acceptance of Common Core. Common Core uses the same philosophy as No Child Left Behind. This is No Child Left Behind on steroids. The SAT test has already been changed and dumbed down to match what is and what will be taught.

Common Core was adopted by this State without real public knowledge and without input. When it was adopted, most residents, especially the parents, really did not understand what Common Core was, what would be taught, what it would mean to them and what it would bring to their children. I believe the major reason, again, for the request of these monies is to cover the cost of Common Core, including, but not limited to, computer purchases for the testing, testing costs themselves, both at the state and local level, and curriculum purchase costs at the local and state level.

I left California for a reason. I do not want Nevada to become little California. The tax proposals being presented at this Session, including this bill, Senate Bill No. 252, are a major step in that direction. When I had to retire, I took a deep cut in pay. I had to adjust. I had to learn to live on that lower income. Rarely, do I see any government agency take a real pay cut. When they talk about cuts, they are talking about cuts in increases, not real cuts. Education does not need more money, it needs less regulation and more true teaching. I know of what I speak because I have spent 25 years in school business—21 years as a Fiscal Director—and I was an accountant for a total of 33 years.

As far as the comment that this is not a Gross Receipts Tax, well, you can call a pig a cow, but it is still a pig. Question No. 3 failed for a reason, and I believe that this is related to Question No. 3. As a taxpayer, I would ask that if this bill is passed, and any Common Core standards, testing, equipment purchases or other costs are eventually included in this funding in the budget, then every teacher should be evaluated on these standards, this year, as it is currently in the law. There are districts that are talking about applying for waivers and may not even abide by the regulations. I feel there should be no opt out, no exemptions, no deferrals and no waivers.

LINDA SANDERS:

I live in North Las Vegas. I was here last night and testified. I appreciate the opportunity to speak to you again. I urge you to vote no on Senate Bill No. 252 that seeks to raise the Business License Tax. I am small business owner. I have been in business for 36 years and have been experiencing a depressed business climate for the last 8 years. I do not appreciate being asked to pay four times what was required a decade ago when business was booming. If this was a well thought out plan, I would be a little more understanding, but throwing billions of dollars at the school system has, in the past, never accomplished the goals of graduating more students. Governors Guinn and Miller and probably others threw money at the school system to no avail. Dropout rates are still too high and, as the leader of the Hispanic Chamber of Commerce testified yesterday, they are still dropping out like flies, and he is for it. Are you going to pay the students to stay in class? Are you going pay them to study, pay them to comprehend, pay their parents to make them study? Yet you want to pay people to not be a bully? If so, I will wager that the outcome will remain the same—failure. You need a well thought-out plan that will work to cause students to succeed. Schools are for learning not for babysitting.

School vouchers to enable parents to decide where they want their kids to go to school have been shown to be much more effective than what the Nevada's small business owners are being forced to enable. Private schools have to operate well and efficiently or they will go out of business. The same standard does not apply to government-run schools. They can force the citizens to contribute with no guarantee of outcome; just tax them. Do not let that be your legacy.

BONNIE MCDANIEL:

I own two small business in Nevada. We sat down last night with the other owner of one of those businesses and figured out that our business license fee will go from \$100, we paid last year, to over \$1,200 next year. Before the recession hit, we were doing in the area of \$2 million to \$5 million per year. Last year, our total gross receipts were \$89,000. Do you honestly think that if we have to pay the \$1,200 that we would not close that business, because it will close.

Before the recession, my second business had 18 employees. For 4 years after the recession, I paid those 18 employees to come to work. We made some concessions, if they had kids in school, we let them take their kids to school, come to work and then go and pick up their kids, and they were paid for the hours they worked. We also paid for their vacations; not their working wages for paid vacations, but we actually paid for them to take a trip. If they wanted to take their spouse that was fine, but they had to pay for that themselves. I am down to running that business myself, and I am here every single day at the Sawyer Building because of all the bills that are going through this year. I have my laptop with me, and if I have to work, I go out to the office, and I do my work on my laptop to run my business. I will close that business as well. Do you really want businesses to close in Nevada? Do you want people to go elsewhere, because that is what is going to happen.

I am going to give you one scenario. When Governor Miller was in office, he had a Commissioner of Consumer Affairs. She decided that because one travel agency, that was actually a California company, did not provide the correct flights and hotels for a family to take a vacation to Hawaii—she only gave the family one-way tickets to Hawaii and when they wanted to come home, they did not have tickets—she decided that every other travel agency in Nevada had to post a \$100,000 bond to the State of Nevada and every agent had to post a \$100,000 bond. Agents do not make anywhere near \$100,000. Not only that, but she then decided they had to have an ARC bond, or they had to have this bond or that bond, or they had to be a member of this, all of which costs money. An ARC bond costs anywhere from \$20,000 on up, and you have to carry it continuously. Seventy-five percent of the travel agencies in the State of Nevada closed their doors because they could not afford to pay all of those fees. She posted all those travel agencies and agents under the NRS code for topless nude dancers. Thank you, but travel agents are not topless, nude dancers, but that is where they are classified now.

SENATOR ROBERSON:

I have a question for you. You said that based on \$89,000 of gross revenue you would pay how much in a business license fee if this bill passes into law?

Ms. MCDANIEL:

We figured it out with our CPA last night and it \$1,236 or something like that.

SENATOR ROBERSON:

I understand, but I do not think that any company with \$89,000 in revenue is required to pay more than \$400 under this proposed legislation. I would be happy to work with you offline. I would like to understand how that was calculated.

Ms. MCDANIEL:

I do not know. Our CPA is ready to file taxes for us, and he figured it out and said that this is going to kill you. The word "education" is nowhere in this bill. There is nowhere where it says these funds are going to go to education. If they are truly going to education, then add an amendment that clearly states all funds raised and all increases must go to the Education Department, and then, only to the portions of the Department that actually do some good, like books, teaching supplies, building schools, better-educated teachers and getting rid of Common Core methods. That is just another form of Agenda 21, which Governor Sandoval is running his office on now. He ran on no new taxes and has shifted to the Agenda 21 side of politics. I can only say shame on Governor Sandoval, and shame on the past governors who were here. They are all happy this is happening because they could not get it done when they were here. Now they are all gone, retired with loads of money and happy, happy, happy. I am not a happy person with these fees, and shame on any and all of you that vote for this bill.

We will be watching these votes. You do not grow an economy by raising taxes on the little people, but rather by lowering taxes and spending in each department and letting small businesses have a chance to grow and be prosperous. The people of Nevada, the voters, your constituents, voted against this particular bill or its equivalent. What will you do? Do you have the gumption to stand up for the constituents and vote against it, or don't you care who put you in office? Two years is not that far away, and people will not forget what you did in that short of time. Vote "no" today, tomorrow and every day in the future for increased taxes on the little people. Vote "no" on Senate Bill No. 252. Thank you very much.

SENATOR ROBERSON:

Ms. McDaniel, I want to thank you for your passionate testimony today.

On the motion of Senator Kieckhefer, seconded by Senator Hardy, the Committee did rise, return and report back to the Senate.

SENATE IN SESSION

At 7:28 p.m.

President pro Tempore Hardy presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee of the Whole has considered Senate Bill No. 252.

MICHAEL ROBERSON, *Chair*

Mr. President pro Tempore:

Your Committee on Transportation, to which was referred Senate Bill No. 209, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

SCOTT HAMMOND, *Chair*

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Health and Human Services:

Senate Bill No. 419—AN ACT relating to persons with disabilities; creating a program within the Aging and Disability Services Division of the Department of Health and Human Services to provide services of independent living and assistive technology for persons who have recently become disabled; revising the terms of members of the Nevada Commission on Services for Persons with Disabilities; and providing other matters properly relating thereto.

Senator Hammond moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By the Committee on Finance:

Senate Bill No. 420—AN ACT relating to the Public Employees' Retirement System; creating the position of General Counsel as a member of the executive staff of the System; and providing other matters properly relating thereto.

Senator Kieckhefer moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

REMARKS FROM THE FLOOR

Senator Hammond requested that his remarks be entered in the Journal.

Today, speaking of Mr. Gil Yanuck here, it is Friends of Nevada Wildlife Day at the Legislature. Not only can you get some elk, but you can celebrate with those who support wild life.

There are representatives here, today, from the Back Country Hunters and the Anglers Coalition for Nevada Wildlife, Nevada Big Horns Unlimited, Northern Nevada Chapter of Safari Club International, Sierra Club Toiyabe Chapter, Congressional Sports Foundation, National Rifle Association, Nevada Conservation League, Nevada Trappers Association, Southern Nevada Coalition for Wildlife, Carson City Fly Fishing Club, Lurie Family Trust and Nevada Water Fowl Association. If you can help me make all of these different organizations feel welcome in the Chambers, I would appreciate it.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of President pro Tempore Hardy, the privilege of the floor of the Senate Chamber for this day was extended to Anton Casper, Barry Casper, Bridgette Casper, Gavin Casper, Leah Casper, Ric Casper and Vivian Casper.

On request of Senator Kieckhefer, the privilege of the floor of the Senate Chamber for this day was extended to Gil Yanuck.

Senator Roberson moved that the Senate adjourn until Friday, March 20, 2015, at 11:00 a.m.

Motion carried.

Senate adjourned at 7:31 p.m.

Approved:

JOSEPH P. HARDY

President pro Tempore of the Senate

Attest: CLAIRE J. CLIFT

Secretary of the Senate