IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Appellant, vs. THE STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION; THE HONORABLE DAN SCHWARTZ, in his official capacity as TREASURER OF THE STATE OF NEVADA; and THE LEGISLATURE OF THE STATE OF NEVADA, Respondents.	Supreme Court No.: 66851 District Court Case No.: 12 OC 00168 1B

JOINT APPENDIX

VOLUME 1 PART 4

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there were still many policy areas in need of address and drew attention to the need to look into the fuel tax area and the laws governing special and enterprise districts. Ms. Henderson recited the technical advisory committee was more than willing to complete whatever needed to be done to create an understandable tax system for all concerned.

SENATE BILL 253: Creates legislative committee to study distribution among local governments of revenue from state and local taxes. (BDR 17-193)

Mr. Hobbs commenced a section-by-section analysis of the components of S.B. 254 contained in Exhibit D. He explained he would handle the first part of the section-by-section review (sections 1 through 22) and would turn the second part of the description (sections 22 through 38) over to Marvin Leavitt, Lobbyist, Director, Intergovernment/Community Relations and Policy Research, City of Las Vegas.

Mr. Leavitt explained the importance of section 22, which was the budget act section. He intimated the section reflected the desire of the committee to create a situation where it was possible for special-purpose governments to discontinue operations and join with a general-purpose government. The provisions contained in S.B. 254 made it much easier to combine governments without financial loss to the communities involved, Mr. Leavitt testified.

Mr. Leavitt pointed out section 35 dealt with the formula utilized to determine the tax base. He remarked it was quickly discovered some governments would benefit from utilizing 1 base year, while others would benefit from the utilization of another. Mr. Leavitt maintained the best solution was to take an average of 2 years so the selection of one of the base years would not occur to the benefit of a particular local government. If the average of 2 years was utilized, Mr. Leavitt insisted there would have to be a system to bring the average up to date. He suggested multiplying the change between the 2 years by each individual local government to make it effective after the current year. Mr. Leavitt testified each local government would receive the proportion of the average of the 2 years. An inflation factor would be applied to bring the base as close as possible between July and December of the affected year, Mr. Leavitt asserted.

Chairman O'Connell requested Mr. Leavitt demonstrate the formula on the chalkboard to clarify the issue. Discussion ensued. Mr. Leavitt reviewed

sections 36, 37 and 38. Upon completion, the chairman provided an opportunity for audience members to inquire about specifics contained within the proposed legislation.

Candi Rohr, General Manager, Kingsbury General Improvement District, posed a question. Ms. Rohr inquired about the allocation formula, asking the difference between allocations to special districts and local governments. She noted Mr. Hobbs mentioned there was no population increase included in the special district formula, and inquired if that meant the special districts would not be keeping pace with local governments as far as the increase in allocations.

Mr. Hobbs responded part of the reason for the difference in allocations had already been touched upon. He stated an example using the Clark County Library District. Mr. Hobbs explained the Clark County Library District encompassed 80 to 90 percent of the entire population of the county. He expressed to throw population statistics on top of that particular district created apparent anomalies. He stated the Clark Library District would have reaped millions of dollars had a population statistic been included in the formula. Mr. Hobbs emphasized the distribution was a relative thing, area to area.

Mr. Leavitt interjected the distribution formula was a deliberate attempt to promote the formation of general-purpose governments, as opposed to special-purpose governments. The formula allowed the special-purpose governments to continue to grow, but also provided some method of encouragement for combining a group of special-purpose governments into a general-purpose government. He pointed out this was one of the official aims of the legislative members of the committee; to encourage the consolidation of special governments into general-purpose governments, towns, or cities. Mr. Leavitt stated the purpose was to more properly define relative needs when providing general services. He indicated right now, when there was a special-purpose government, whatever revenue received was used for that purpose. If the district was a general purpose government, something else could be determined more important this year, Mr. Leavitt asserted. He reiterated the formula was a deliberate attempt to encourage the combination of special- and general-purpose governments.

Tom Fransway, Chairman, Board of Commissioners, Humboldt County, explained his understanding of the distribution formula was the base years were derived from the consumer price index from years 1995-1996 and 1996-1997.

He questioned whether in 5 years the base would be configured from years 2000-2001 and 2002-2003.

Mr. Hobbs clarified the years 1995-1996 and 1996-1997 establishment of the base year would only be relevant the first year the base year was established. After, the values would be carried forward by the consumer price index change, population, and assessed value statistics. Mr. Hobbs insisted once all factors were applied to the base, the resulting value would be the base for the next year, and so forth, he added.

Mike L. Baughman, Lobbyist, Lander County, queried page 3, line 38-40, ". . . average percentage change in the assessed valuation of taxable property in the local government, except any assessed valuation attributable to the net proceeds of minerals, over the 5 fiscal years immediately preceding the year in which the allocation is made. . . ." Additionally, he questioned page 5, lines 37-39, ". . . an enterprise district shall not pledge any portion of the revenues from any of the taxes included in the fund to secure the payment of bonds or other obligations. . . ." Mr. Baughman asked about the logic behind each of the previously mentioned passages.

Mr. Leavitt answered originally, the committee included the net proceeds of mines as a factor in the distribution formula. After practical application, the committee found, because that factor was so volatile, it was unreliable and caused great fluctuation. He insisted it was impractical for any district to use net proceeds, as proceeds could fluctuate revenues as much as 50 percent in 1 year. Mr. Leavitt pointed out the committee's position with regard to enterprise districts. He stated there was a basic feeling among committee members enterprise districts receiving basic tax revenues should be eliminated entirely. If enterprise districts were allowed to continue, he concluded, the thought was enterprise districts should not use future tax revenues for these types of debt, but ought to impose user service charges.

Theresa L. Glazner, Staff Budget Analyst, Department of Taxation, expressed appreciation at being included in the compilation of the formula over the last 2 years. Ms. Glazner mentioned the ability to put the formula together at the department and to obtain staff to consolidate the formulas created a high level of comfort in the formula and implementation process.

Carole A. Vilardo, Lobbyist, Nevada Taxpayers Association, recited wholehearted support for the legislation. Ms. Vilardo stated ~~her organization~~

was privileged to be involved as a member of the committee, insofar as attendance in the hearings and in being made to feel as if questions were being answered and addressed. She expressed appreciation the technical advisory committee, consisting of members of government, considered the taxpayer point of view. The bill was not only revenue-neutral to government, but revenue-neutral to the taxpayer, as well, Ms. Vilardo maintained. She asserted the strong belief all special and enterprise districts should be reauthorized every 20 years. Ms. Vilardo declared in many cases, when these districts were created, they were created where there was no population anywhere near. In this time of growth, some districts now encroach into an urban population area, she recognized. Considering the formula associated with the $3.64 tax cap, districts in urban areas impacted the services the general government in the area provided. Ms. Vilardo urged committee members to consider amending language concerning the tax cap into the bill.

Patrick Finnigan, General Manager, Incline Village General Improvement District, stated opposition to the legislation. He commented the intent of the legislation was good and noted members of his group supported the idea of distributing governmental revenues to governments performing governmental functions. Alternately, Mr. Finnigan surmised, excluding enterprise functions of government from the receipt of governmental revenues was discriminatory against small, local governments. He stressed the legislation did not treat all governments the same in relation to their governmental and enterprise functions. Mr. Finnigan outlined most governments in the state perform both governmental and enterprise functions, some perform more of one than the other. He asserted the bill discriminated against those performing less governmental functions in favor of those who performed more governmental functions.

Chairman O'Connell inquired which part of the bill Mr. Finnigan was specifically addressing. Mr. Finnigan replied he was speaking about the bill in general which singled out small, special districts and GIDs not to exclude from distribution, but to reduce or cap their distributions of Supplemental City County Relief Tax (SCCRT) revenues.

Chairman O'Connell inquired whether Mr. Finnigan understood the reason for the change in tax distribution, due to the fact GIDs did not supply the other social services required of the larger part of government. Mr. Finnigan responded affirmatively. The chairman continued by stating generally, those areas were going to enhance the quality of life for a small section of people who should be willing to pay for the enhancement. Mr. Finnigan answered ~~he understood,~~

which was why he agreed with the fundamental premise of the bill. Chairman O'Connell explained in many situations there were circumstances where the government providing the overall service was shorted funds because GIDs and special districts were being subsidized by not just their own government, but other taxpayers in the state.

Mr. Finnigan emphasized general improvement districts in the state were formed for many reasons, a common denominator in all cases were they were formed in outlying rural areas where cities and counties did not perform any of the governmental services or could not perform governmental functions in those areas. He stated in the case of the Incline Village General Improvement District (IVGID), Washoe County could not perform the services performed by IVGID. GIDs were performing functions on behalf of counties, cities, or other governments in those rural jurisdictions.

Mr. Finnigan expounded the Tax Distribution Act of the early 1980s was premised on the utilization of a formula distinguishing SCCRT as the major source of revenues to these local governments, as opposed to ad valorem taxes. Additionally, he recited, this measure and the premise enterprise-oriented functions of government should not receive SCCRT revenues was in conflict with other legislation considered this year, namely, Assembly Bill (A.B.) 291.

ASSEMBLY BILL 291: Imposes sales and use taxes for water and wastewater facilities in certain larger cities. (BDR 32-1485)

Several of the GIDs named as special or enterprise districts were located in the Tahoe Basin, Mr. Finnigan asserted. He noted GIDs located in the Tahoe Basin had specific responsibilities regarding the preservation of Lake Tahoe other GIDs did not have. Mr. Finnigan stated preservation responsibilities should be funded not only by the local residents, but by the state and federal governments, as well.

Mr. Finnigan stated agreement with the premise enterprise functions should be self-supporting and should not be receiving governmental revenues. However, he stressed, all governments should be subject to the new formula or the derivation of a new formula, whereby all enterprise functions of government were excluded by the calculation or the receipt of tax revenues. The end result would be a formula would be devised to allocate SCCRT to only governmental functions, whether in GIDs, counties or cities, Mr. Finnigan suggested. With the

new formula, there would have to be legislation to standardize the method of accounting for enterprise and governmental functions, he noted. Although there were generally accepted accounting practices with respect to accounting functions, governments did have some latitude on the accounting of things. For example, Mr. Finnigan testified, Washoe County accounted for the public-works function as a General Fund function, while IVGID accounted for similar activities in an enterprise fund. He noted the third possibility would be to exclude from the application of the bill those local governments, special districts or general improvement districts located within the Lake Tahoe Basin, recognizing their special status, and recognizing the Lake Tahoe Basin bore costs the rest of local governments did not. Mr. Finnigan stated the fourth suggestion was to define the functions of government in more than two categories, adding a third category defined as "quasi-governmental." He voiced sewer and water works facilities and operations were quasi-governmental, in that the provision was for the health and welfare of the community and could not be performed by private industry, which posed a problem for local industry. Mr. Finnigan outlined the fifth recommendation was to provide alternate direct-funding capabilities for the affected local government. The ability for review by the executive director of the Department of Taxation might have built some capabilities into the bill, he emphasized. The sixth suggestion surrounded requiring counties or cities to assume the functions of the affected local governments compromised by the legislation, otherwise requiring those counties to relinquish the SCCRT revenues gained from the legislation back to those local governments which were compromised by the change.

Senator O'Donnell questioned the impact to IVGID upon passage of the bill. Mr. Finnigan stated the impact to IVGID would be minimal. The formula was based on increased and assessed valuation for the growth rate of assessed valuation and the consumer price index (CPI) correction. He noted IVGID would not be hurt by the fact there would not be a population correction due to the limited-growth factor. Mr. Finnigan clarified he was not speaking on the bill due to the adverse affects to IVGID, but on the principle all governments should be affected equally.

Senator O'Donnell queried whether the CPI correction used to determine the tax base was "out in stone" or if the new CPI coming out of Washington, D.C. would be utilized. Mr. Leavitt responded the annual CPI distributed by the United States Department of Labor would be utilized.

Mr. Hobbs concurred with Mr. Leavitt and expounded the objective was to try to provide some index which would allow for constant purchase power of the government dollar. Whether or not the existing or a revised CPI would best reflect government purchase power, it was the most accessible statistic, Mr. Hobbs opined. He relayed the attempt was to utilize, over time, that which best reflected the objective, which was to maintain some level of constant purchase power.

Ms. Rohr testified in opposition to S.B. 254. She drew attention to the comprehensive analysis made by Mr. Finnigan and expressed support for the opinion set forth by Mr. Finnigan. Ms. Rohr emphasized GIDs provided governmental functions and contended the bill was part of a political effort to consolidate the GIDs with the cities and counties. Ms. Rohr stated she did not disagree with the consolidation in the long run, however, she declared as long as GIDs were charged with the responsibility of providing those services the county was not providing, funds were necessary to continue the provision in an appropriate manner.

Chairman O'Connell questioned the services provided by the Kingsbury GID. Ms. Rohr outlined the provision of road maintenance, snow removal, drainage, erosion control, water and sewage collection. The chairman inquired whether water and sewage collection were fee-structured. Ms. Rohr replied the water and sewage collection was 100 percent fee-based. Chairman O'Connell requested funding information with regard to snow removal. Ms. Rohr responded snow removal was supported by tax dollars. The chairman inquired whether any other road maintenance was provided by the GID. Ms. Rohr explained Kingsbury GID was in the process of raising funds for road reconstruction. She stated the revenue was not currently available, however, discussion has occurred with the GID customer base regarding a tax override for that purpose. Senator O'Connell questioned the status of the area regarding the $3.64 tax cap, which related to the tax override. Ms. Rohr testified the tax cap was currently at $2.35.

Senator O'Donnell inquired whether the Kingsbury GID was analogous to the Incline Village GID. Ms. Rohr indicated the Kingsbury GID was also a $3.18 district, although they provided different services. Senator O'Connell asked how much of the Kingsbury GID budget was subsidized with SCCRT. Ms. Rohr responded 60 percent of the GID budget was funded by SCCRT.

Mr. Hobbs clarified for those GIDs similar to Incline Village and Kingsbury, in the past the GIDs received SCCRT, and in some cases, motor vehicle privilege taxes. Both of those revenues were driven over the years by growth in assessed value, he noted. Mr. Hobbs pointed out population never entered into the distribution of revenues the GIDs received over the past years. From the technical advisory committee's standpoint, Mr. Hobbs emphasized, there was a perceived difference between units of government providing the full litany of services versus those providing lesser services.

Chairman O'Connell indicated there were proposed amendments to the bill. Ms. Glazner proposed amendments from Michael A. Pitlock, Executive Director, Department of Taxation. Mr. Pitlock had suggested placing a definition of enterprise districts in section 4, as opposed to listing attributes, she relayed. Ms. Glazner stated amendments were submitted to the Legal Division, Legislative Counsel Bureau, for drafting. Additionally, Ms. Glazner noted, concerns were voiced with regard to providing a type of definition where an enterprise-type of government would allow themselves some type of a governmental function, in order to qualify for a tax formula and subsequent funding. Mr. Pitlock would work on specific language for submission at a later date, Ms. Glazner concluded.

Senator Raggio questioned the $155,000 fiscal note which indicated the implementation of the bill would require that amount, new positions, and related items. The senator inquired whether the fiscal note was valid.

Ms. Glazner explained one thing the department attempted to achieve was a consolidated distribution. It was decided a consolidated operation in this area was also necessary, she recited. Ms. Glazner pointed out there were several departments distributing pieces of the formula which could not occur any longer. She stressed the need to pull all components together into one area of the department. Ms. Glazner testified in the Administrative Services Division there was an employee distributing some of the excise taxes, with the SCCRT distributed in local government based on formula application specific to the bill. This section would need to be enhanced to create a full-time distribution center for the department, interacting with the Department of Motor Vehicles and Public Safety, with the counties on the Real Property Transfer Tax, and having the different areas of the department submit the information to that section for a massive distribution to the local governments, she expounded. Ms. Glazner contended due to the size of the distribution, it could not be completed in piecemeal fashion anymore. The result was the consolidated distribution and

statistics section enhancing it with a supervisory level position and staff to complete the distribution, she expressed.

Senator Raggio queried whether the associated costs were included in the Department of Taxation budget. Ms. Glazner stated the department would be requesting an enhancement of the budget for the next biennium. Senator Raggio stated the Department of Taxation needed to request an appropriate enhancement module in the operating budget to cover these costs, assuming they were still valid.

The chairman asked Mr. Hobbs to outline other areas in need of amendment. Mr. Hobbs maintained the following changes were necessary:

- Page 4, line 10 - language referring to the 5-year moving average for the determination of future revenues of a local government. If a government did not have 5 years of actual assessed value in order to complete a 5-year moving average, the language should acknowledge if 5 years were not available, all available years should be utilized to make the calculation.

- Page 2, line 24 - Section 8 referred to the local government tax distribution fund. Technical advisory committee members requested the addition of the language ". . . fund with a separate account for each county to ensure the amounts for each county are being segregated for within that fund. . . ."

- Page 26, lines 11 and 13 - ". . . multiplying the average of the amount of each tax included in the fund that was distributed to the local government or special district for the fiscal years ending on June 30, 1996 and June 30, 1997 by one plus the average percentage change. . . ." The words "average of the" should be eliminated. Additionally, on line 13, "average" should be removed in order for the passage to read ". . . by one plus to percentage change. . . ."

- Page 14, line 12 - ". . .whichever is less, except that the amount distributed to the county must not be less than the amount specified in subsection 10. . . ." Subsection 10 should be stricken with the addition of ". . . subsection 5. . . ."

Ms. Glazner submitted the one additional amendment:

- Page 5, line 8 - Subsection noted should be "subsection 4."

Since there was no other entity wishing to address Senate Bill 254, the Senate Committee on Government Affairs was adjourned at 3:40 p.m.

RESPECTFULLY SUBMITTED:

Deborah A. Riggs,
Committee Secretary

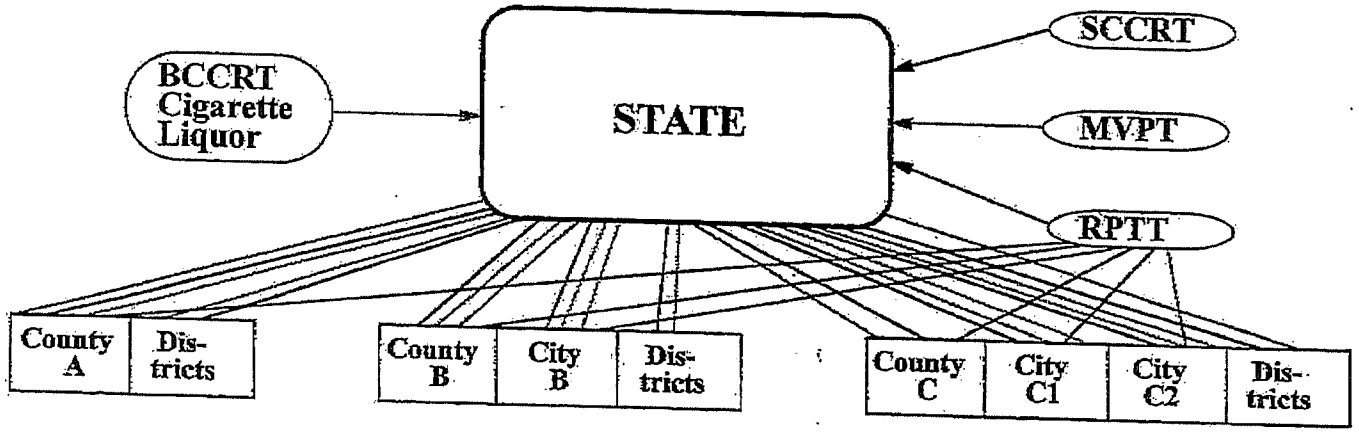
APPROVED BY:

Senator Ann O'Connell, Chairman

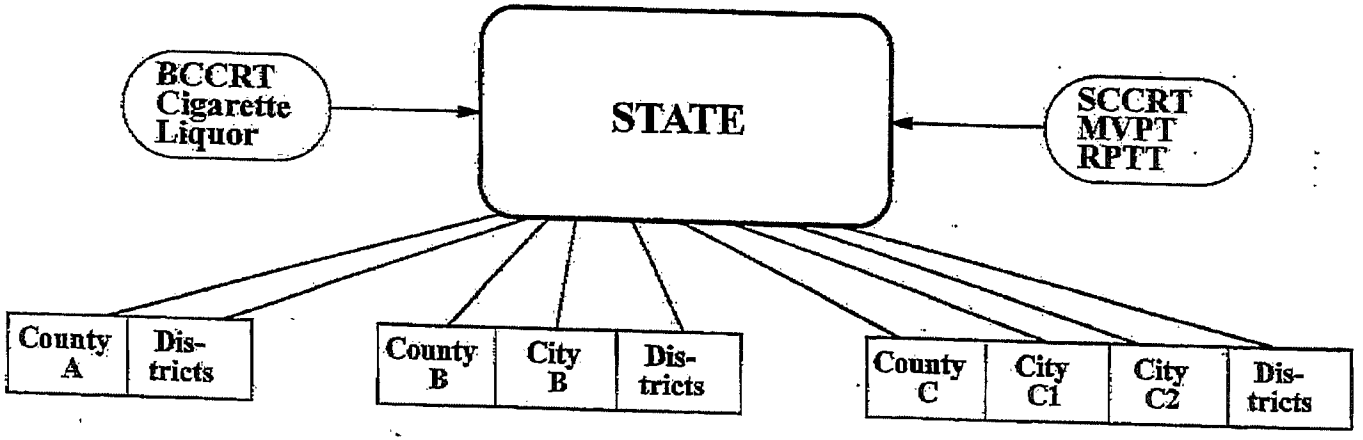
DATE:

SCR 40 Interim Subcommittee

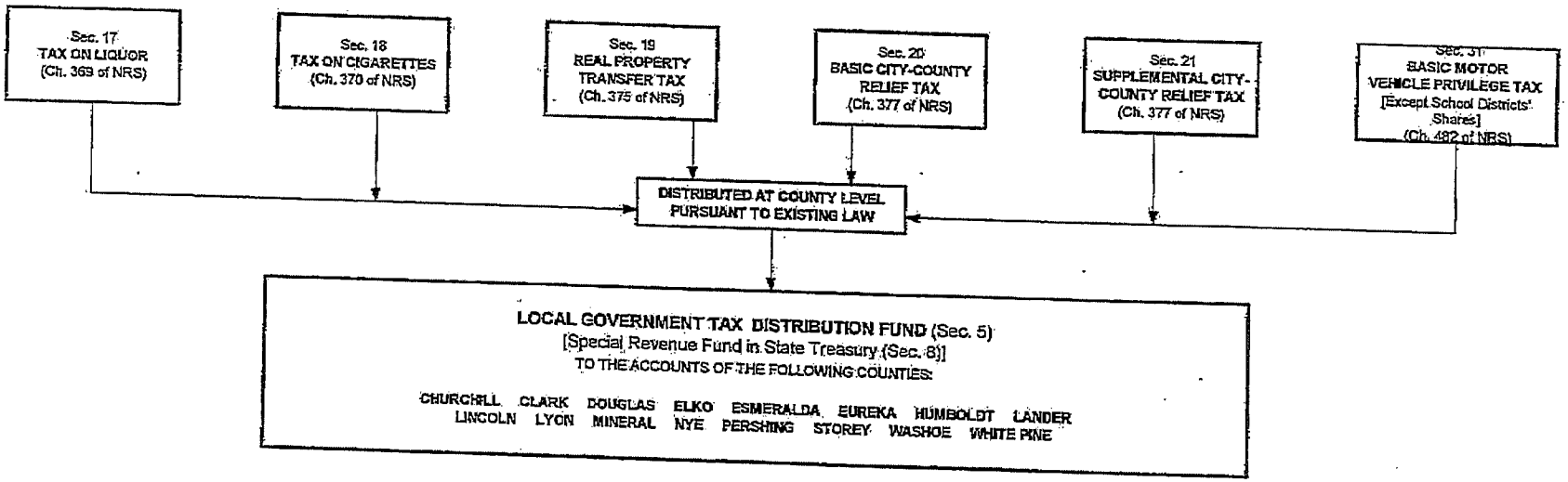
Existing Revenue Distribution



Proposed Revenue Distribution

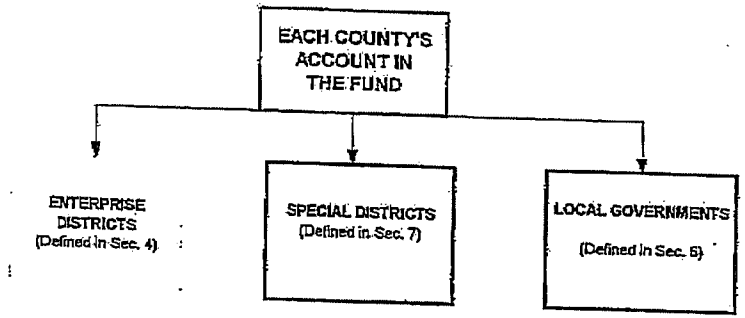


May 20,1996



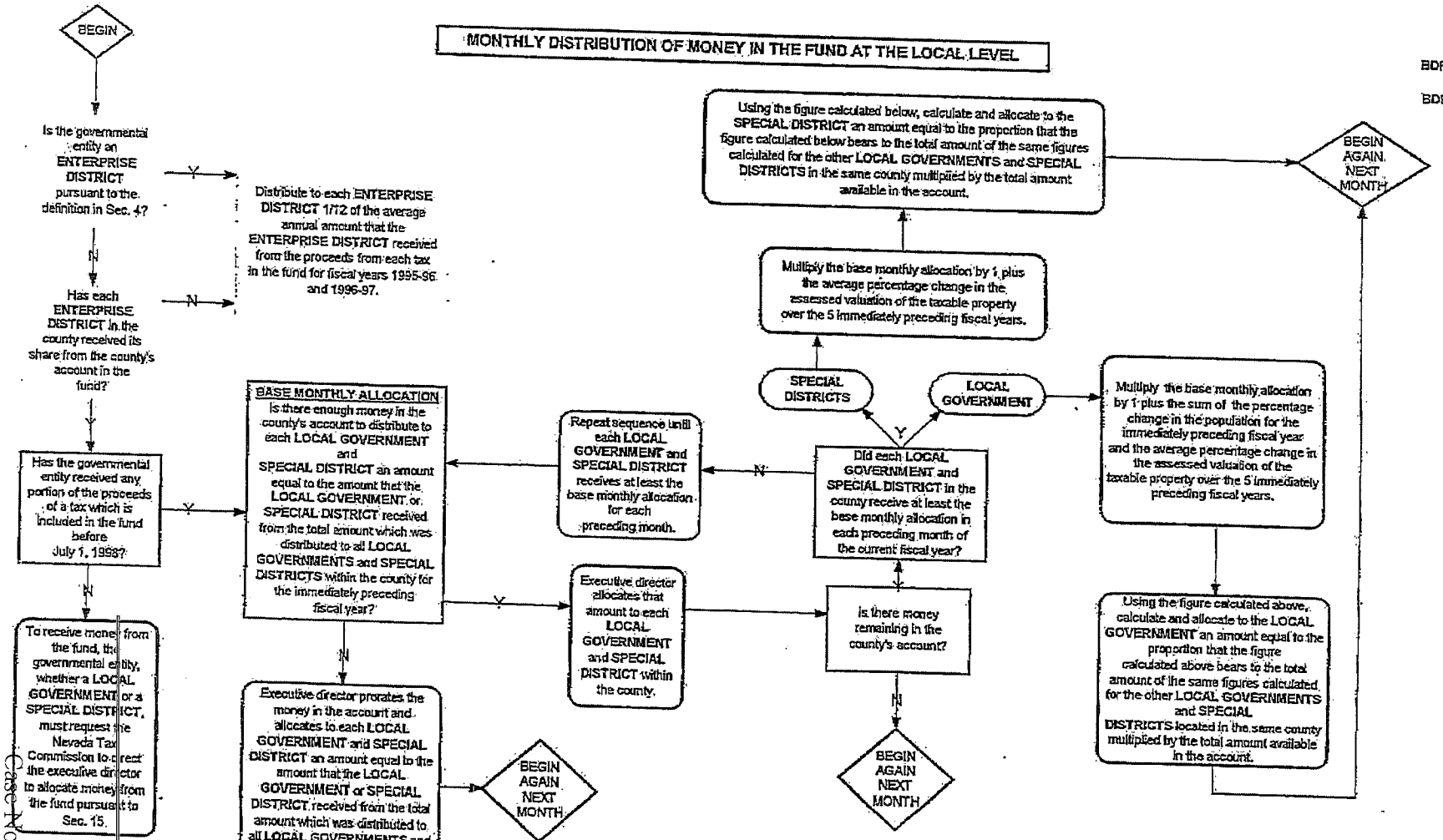
LOCAL GOVERNMENT TAX
DISTRIBUTION FUND

BDR 32-187
and
BDR 32-314



MONTHLY DISTRIBUTION OF MONEY IN THE FUND AT THE LOCAL LEVEL

BDR 32-187
and
BDR32-314



Y = Yes

N = No

Prepared by Legal Division, Legislative Counsel Bureau

JA 819

Case No. 69851

59

Section-by-Section Analysis of S.B. 254

1. **Preamble.** Legislative Declaration. The legislative declaration is included to offer an explanation why it is necessary to enact special legislation with respect to the enterprise districts (the named governmental entities such as the Carson Water Subconservancy District).

2. **Sections 1-3.** Directory language and definition sections.

3. **Sec. 4.** Sets forth the specific governmental entities that are "enterprise districts" for the purposes of the bill.

4. **Sec. 5.** Definition of the "fund" (the Local Government Tax Distribution Fund).

5. **Sec. 6.** Defines, for the purposes of the bill, a "local government" to be a city, county or town only.

6. **Sec. 7.** Defines, for the purposes of the bill, a "special district." A special district is any governmental entity which receives money from one of the taxes included in the fund and which is not a local government or an enterprise district. An example of a special district is a general improvement district.

7. **Sec. 8.** Creates the fund as a special revenue fund in the state treasury. Makes the executive director of the department of taxation the administrator of the fund. {The fund contains the following taxes: liquor tax, cigarette tax, real property transfer tax, basic city-county relief tax, supplemental city-county relief tax and the basic motor vehicle privilege tax, except a for a portion allocated to the school districts.}

8. **Sec. 9.** Qualifies the governmental entities that will receive money from the fund. Unless a governmental entity received, before July 1, 1998, money from one of the taxes included in the fund or unless the governmental entity complies with the provisions of section 15, it will not receive money from the fund.

9. **Sec. 10.** Sets forth the basic formula for distributing the money in the fund. After the establishment of the initial amount to be allocated to each enterprise district, special district and local government pursuant to section 35, the enterprise districts receive the same amounts that they received in the immediately preceding fiscal year and the local governments and special districts receive amounts equal to the amounts they received in the immediately preceding year adjusted for growth pursuant to the Consumer Price Index.

10. **Sec. 11.** **(See Chart)** Sets forth the calculations the executive director must perform each month for the allocation of the money in the fund. Also directs the state treasurer to distribute the money in the fund on a monthly basis.

Subsection 2. Establishes the base monthly allocation which is one-twelfth of the amount calculated in section 10.

Subsection 3. If the executive director determines there is not enough money in the account to allocate to each enterprise district, local government and special district the amounts they should receive pursuant to subsection 2, he must prorate and allocate to each governmental entity an amount equal to the percentage the governmental entity would have received pursuant to subsection 2.

Subsection 4. Unless a governmental entity received less than the amount it should have received pursuant to subsection 2 for a preceding month of the fiscal year (see

subsection 5), the executive director shall, after the base monthly allocation, allocate any money remaining in the account to the local governments in the county based on the change in population and the change in assessed valuation of property in the local government and to the special districts in the county based on the change in assessed valuation of property in the special district only.

Subsection 5. Requires the executive director to ensure that each enterprise district, special district and local government receives at least the base monthly allocation for each preceding month of the fiscal year before he allocates any extra money remaining in the account pursuant to subsection 4.

Subsection 6. Provides for the determination of the change in population of local governments for the purposes of subsection 4.

Subsections 7, 8 and 9. Requires the executive director to provide estimates to the governmental entities of the amounts they will receive from the fund for that fiscal year and allows the governmental entities to use those estimates for preparing their budgets.

11. **Sec. 12.** Requires the executive director to ensure that each governmental entity will receive at least the amount of money that was pledged to secure the payment of any bonds or other obligations from any tax which is included in the fund.

12. **Sec. 13. Subsection 1.** Prohibits an enterprise district from pledging any portion of the revenues from any of the taxes included in the fund before the effective date of the act (July 1, 1998) to secure the payment of bonds or obligations.

Subsection 2. Requires the executive director to ensure that a governmental entity that is created between July 1, 1996, and July 1, 1998, does not, before the effective date of the act, receive money from the taxes which will be included in the fund and thereby

be able to participate in the distribution of the money in the fund unless they provide the same governmental services that governmental entities are required to provide pursuant to section 15 to be included in the distribution of the money in the fund.

13. **Sec. 14.** Sets forth the procedure by which a local government or special district within the same county may agree to distribute the money in the county's account in the fund pursuant to an alternative formula.

Subsection 1. The governing body of each party to a cooperative agreement must agree to the terms of the agreement by majority vote.

Subsection 2. Requires the executive director to be notified of any agreements for alternative formulas.

Subsection 3. Prohibits a local government or special district from entering into more than one agreement.

Subsection 4. The terms of two or more cooperative agreements in a county must not conflict.

Subsection 5. A local government or special district that does not wish to participate in a cooperative agreement will continue to receive its share from the fund pursuant to the provisions of sections 10 and 11.

Subsection 6. The governing body of each party to a cooperative agreement must agree to the terms of the agreement by majority vote and may amend the terms of the agreement by majority vote. The terms may only be amended once during the first two years the agreement is in effect and once every year thereafter.

Subsection 7. The governing body of each party to a cooperative agreement must by unanimous consent agree to terminate the agreement.

Subsections 8 and 9. The executive director must continue to calculate the amount that each party to a cooperative agreement would receive under the terms of the regular formula. If an agreement is terminated, the parties would receive the amounts to which they would be entitled under the terms of the regular formula.

14. **Section 15.** Provides the procedure by which a local government or special district that is created after July 1, 1998, may be included in the distribution of the money in the fund. Such a local government or special district must provide police protections and at least two of the following services: fire protection; construction, maintenance and repair of roads; or parks and recreation. The governing body must submit a request to the executive director on or before December 31 of the year immediately preceding the first fiscal year that the local government or special district would receive money from the fund. The executive director then analyzes the request and makes a recommendation to the committee on local government finance. The committee on local government finance reviews the findings of the executive director and if it determines that an adjustment is appropriate, it submits a recommendation to the Nevada tax commission. If the Nevada tax commission determines that the adjustment is appropriate, it orders the executive director to make the adjustment.

15. **Section 16.** Makes changes necessary for consistency with new provisions.

16. **Section 17.** Includes the tax on liquor in the fund.

17. **Section 18.** Includes the tax on cigarettes in the fund.

18. **Section 19.** Includes the tax on the transfer of real property in the fund.

19. **Section 20.** Includes the basic city-county relief tax in the fund.

20. **Sections 21 and 22.** Includes the supplemental city-county relief tax in the fund.

21. **Sections 23 and 24.** Provides for adjustments in the allowed taxes ad valorem, population and assessed valuation of governmental entities when the functions of one governmental entity are assumed by another.

22. **Section 25.** Locates sections 23 and 24 within the Local Government Budget Act in Chapter 354 of NRS.

23. **Sections 26 to 30.** Make changes necessary for consistency with new provisions.

24. **Sections 31 and 32.** Includes the basic motor vehicle privilege tax in the fund. The portion of the tax which is allotted to the school district of the county must receive its share of the money in the county's account in the fund that is derived from this tax before any remaining money may be distributed to the other governmental entities.

25. **Section 33 and 34.** Make changes necessary for consistency with new provisions.

26. **Section 35.** Sets the amounts the executive director shall allocate to the enterprise districts, local governments and special districts for the initial year of distribution pursuant to the new formula. The initial year of distribution is the fiscal year ending on June 30, 1999.

Subsection 1. Sets the amount that each enterprise district will receive at the average amount that the enterprise district received from the proceeds from each tax included in the fund for the fiscal years ending on June 30, 1996, and June 30, 1997.

Each enterprise district will receive this same amount each year pursuant to the new formula.

Subsection 2. Sets the amount that each local government and special district will receive in the initial year of distribution by taking the average amount that the local government or special district received for the fiscal years ending on June 30, 1996, and June 30, 1997, and adjusting that amount by the total of the amounts received by the local governments and special districts located in the same county and the average percentage change in the Consumer Price Index for the period from July 1, 1997, to December 31, 1997.

27. **Section 36.** Provides the procedure by which the governing body of a local government or special district that receives, before July 1, 1998, any portion of the proceeds from a tax which is included in the fund may petition for an adjustment to the amounts it will receive from the fund for the initial year of distribution. The governing body must request the adjustment on or before December 31, 1997. The governing body submits the request to the executive director who then analyzes the request and makes a recommendation to the committee on local government finance. The committee on local government finance reviews the findings of the executive director and if it determines that an adjustment is appropriate, it submits a recommendation to the Nevada tax commission. If the Nevada tax commission determines that the adjustment is appropriate, it orders the executive director to make the adjustment.

28. **Section 37.** Requires the executive director to calculate, on or before September 15, 1997, the amount each enterprise district will receive.

29. **Section 38. Effective dates.**

MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Sixty-ninth Session
April 30, 1997

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 2:40 p.m., on Wednesday, April 30, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ann O'Connell, Chairman
Senator William J. Raggio, Vice Chairman
Senator Jon C. Porter
Senator William R. O'Donnell
Senator Raymond C. Shaffer
Senator Dina Titus
Senator Michael A. (Mike) Schneider

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness, Central Nevada Senatorial District
Senator Dean A. Rhoads, Northern Nevada Senatorial District

STAFF MEMBERS PRESENT:

Dana R. Bennett, Committee Policy Analyst
Scott G. Wasserman, Chief Committee Counsel
Deborah A. Riggs, Committee Secretary

OTHERS PRESENT:

John P. Sande III, Lobbyist, Airport Authority of Washoe County
Jeannine Coward, Legislative Coordinator, Office of the Lieutenant Governor
Larry D. Struve, Chief, Office of Business Finance and Planning, Department of Business and Industry
Dale A.R. Erquiaga, Chief Deputy Secretary of State, Office of the Secretary of State
Thomas J. Grady, Lobbyist, Executive Director, Nevada League of Cities
Ray Espinoza, Mayor, City of Lovelock
Bjorn Selinder, Manager, Churchill County

notification would pose a problem for him. Mr. Kramer expressed he was sure that would not be difficult for the smaller counties. The chairman questioned whether this would be a problem for Clark and Washoe counties. Representatives from both counties contended there might be some fallout, but did not foresee a problem.

SENATOR O'DONNELL MOVED TO AMEND AND DO PASS SENATE BILL 308.

SENATOR SHAFFER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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The chairman opened discussion on the amendment to Senate Bill (S.B.) 254.

SENATE BILL 254: Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

Scott G. Wasserman, Chief Committee Counsel, Legal Division, Legislative Counsel Bureau, read from the final page of the amendment which contained a description of the changes. Mr. Wasserman explained the proposed amendment changed the definition of enterprise district and enabled the executive director of the Department of Taxation to determine which districts were enterprise districts for the purposes of the bill. He expressed the amendment ensured the provisions of subsection 5 of NRS 354.5987 did not apply to the calculations made pursuant to section 35 of the bill for an unincorporated town. Mr. Wasserman stressed a provision was added which increased the allocation made, pursuant to subsection 2 of section 10 of the bill, for the fiscal year 2000/2001 for unincorporated towns which would have received a distribution of the proceeds of the basic privilege tax beginning in the fiscal year 2000/2001 by the amount the town would have received, but for the provisions of the bill and included the amounts in the base of the town for future years. Finally, he testified, the proposed amendment added an appropriation to the Department of Taxation for costs associated for the implementation of the bill and made other technical corrections.

Brenda J. Erdos, Legislative Counsel, Legal Division, Legislative Counsel Bureau, detailed the aforementioned changes discussed by Mr. Wasserman. In addition, Ms. Erdos defined technical deletions necessary for the enactment of the amendment.

Chairman O'Connell commended Ms. Erdos and Mr. Wasserman for the last-minute compilation and completion of amendments to S.B. 254. Senator Raggio mentioned there was previous discussion regarding an amendment to section 8 of the bill, which would require separate accounts for each county. Ms. Erdos responded the senator was correct and the changes were not in the amendment. She offered to add the provision.

Chairman O'Connell inquired whether Dana R. Bennett, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, had the opportunity to review the amendment to ensure specific changes occurred. Ms. Bennett confirmed she reviewed the amendment and the chairman's concerns were addressed.

Senator Raggio pointed out section 35, page 26, line 11, subparagraph a. The senator mentioned the committee had discussed striking the word "average." Senator Raggio questioned whether the word was removed in the amendment. Ms. Erdos responded negatively. Marvin Leavitt, Lobbyist, Director, Intergovernment/Community Relations and Policy Research, City of Las Vegas, interjected the first reference to "average" was concluded to be acceptable. The "average" on line 13 should be deleted, Mr. Leavitt opined.

Chairman O'Connell closed the work session on S.B. 254 and commenced discussion on Senate Bill (S.B.) 148.

SENATE BILL 148: Authorizes department of human resources and department of education to issue subpoenas to compel attendance of witnesses at certain administrative hearings. (BDR 18-591)

The chairman explained the amendment before the committee members outlined the subpoena powers in S.B. 148 could only apply to that specific section of law.

MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Sixty-ninth Session
May 2, 1997

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 11:35 a.m., on Friday, May 2, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ann O'Connell, Chairman
Senator William J. Raggio, Vice Chairman
Senator Jon C. Porter
Senator William R. O'Donnell
Senator Raymond C. Shaffer
Senator Dina Titus
Senator Michael A. (Mike) Schneider

STAFF MEMBERS PRESENT:

Dana R. Bennett, Committee Policy Analyst
Kim Marsh Guinasso, Committee Counsel
Angela Culbert, Committee Secretary

OTHERS PRESENT:

Michael A. Pitlock, Executive Director, Department of Taxation
Marvin A. Leavitt, Lobbyist, City of Las Vegas
Mary Walker, Director, Finance/Redevelopment, City of Carson City
Mary E. Henderson, Lobbyist, Washoe County

Chairman O'Connell opened the meeting with a review of the latest amendment (Exhibit C) on Senate Bill (S.B.) 254.

SENATE BILL 254: Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

Chairman O'Connell noted language offered on page 1 of the proposed amendment in section 8, page 2, line 25 of the bill which would delete the

period and insert, "with a separate account for Carson City and each county," was an incorrect change. She explained the language was supposed to be taken out per the previous committee discussion of the legislation.

Michael A. Pitlock, Executive Director, Department of Taxation, clarified it is unnecessary for a separate account be created at the controller's office for each county and Carson City for proper accounting of distributions as the accounting is done within the department. He recognized this language would add a complication to the process by creating separate accounts for each county and Carson City which could potentially delay timely distributions from the fund to local governments. The Department of Taxation, he explained, has been working to ensure distributions are made as timely as possible to local governments to avoid cash flow problems.

Senator Raggio maintained local government had previously indicated separate accounts were necessary. Mr. Pitlock testified some participants expressed concern about the ability to ensure the integrity of the first tier of distribution since the remainder of S.B. 254 deals solely with the second tier. The first tier, he asserted, is adequately protected through language in the bill, and, therefore, separate accounts established by the controller's office is unnecessary.

Chairman O'Connell requested Kim Marsh Guinasso, Committee, Counsel, Legal Division, Legislative Counsel Bureau, review the proposed amendment (Exhibit C) and the corresponding section-by-section analysis of S.B. 254 (Exhibit D). Ms. Guinasso outlined the changes made beginning with the addition of a section 12.5 in which the executive director determines an entity to be an enterprise district, noting section 4 provides an adjusted definition of an enterprise district. She explained the criteria for the executive director's determination is set forth in new section 12.5 of the bill. The next provision she summarized amends section 14 by changing singular language to plural thereby allowing the governing bodies to enter into more than one cooperative agreement providing the same local government or special district was not involved. She expounded the city of Sparks could enter into one cooperative agreement with Reno and another with Washoe County as long as the terms of the agreements did not conflict with each other as determined by the executive director.

Senator Raggio expressed the change would be too limiting and questioned whether Reno and Sparks could enter into more than one local cooperative agreement. Ms. Guinasso clarified the provision would apply ~~only to purposes~~

of a cooperative agreement to establish an alternative formula for the distribution of taxes. She continued explaining the requirement of "unanimous consent" to terminate the agreement is eliminated in section 14, page 7, line 10 of the bill.

Ms. Guinasso outlined new section 18.5 of S.B. 254 (Exhibit C), explaining this would clean up language to ensure there would be no conflicts in existing law. Senator O'Donnell questioned whether theses changes would result in depletion of money from the Highway Fund. Ms. Guinasso responded the Highway Fund would not be impacted as the changes concern the portion of the basic motor vehicle privilege tax going to local governments.

Ms. Guinasso stated section 21.5 is a new change added on the advice of bond counsel to amend Nevada Revised Statutes (NRS) 377.080, a provision safeguarding bondholder contracts, to ensure any bonds issued before the effective date of the bill remain unchanged. The change, she added, also determines the base pledged would remain constant. Marvin A. Leavitt, Lobbyist, City of Las Vegas, verified this explanation to be a correct summation of the proposed changes. He furthered by stating a permissive pledge existed in statutes dealing with a supplemental city/county relief tax to be used for the payment of bonds. With passage of the legislation, he explained, each government would receive money from this one fund, and, therefore, the Supplemental City County Relief Tax (SCCRT) loses its identity. Mr. Leavitt recognized the provision to be a means by which to guarantee money originally pledged for the repayment of the bonds will remain while providing the way in which this system will be operated in the future. He explained this intent was thought to have been covered in the initial drafting of the legislation, though, upon review, a concern was raised a lesser amount would be available pledged for the repayment of bonds. Chairman O'Connell remarked this language would ensure the bond payment would be protected.

Continuing her review of the amendment proposal (Exhibit C), Ms. Guinasso explained, the references to "average" would be deleted in section 35 of the bill as a result of concern raised by Senator Raggio. This section is further amended, she noted, by changing subsection 3 to provide the change to NRS 354.5987 added in Senate Bill (S.B.) 556 of the Sixty-eighth Session would not apply to the calculations made for the base of unincorporated towns.

SENATE BILL 556
OF THE SIXTY-EIGHTH SESSION: Provides additional circumstances for creating unincorporated towns and revises provisions governing establishment of basic ad valorem revenue for certain local governments.

She specified the amendment to section 35, subsection 3, paragraph (a) of the bill provided the base would not be affected by those provisions set forth in subsection 5 of NRS 354.5987. The referenced section of NRS, she indicated, has a scheme which establishes a percentage gradation and the proposal would eliminate that calculation from the calculated base thereby bringing unincorporated towns up to 100 percent to match other entities. The amendment to section 35, page 26, line 26 of the bill, she noted, deletes all of subsection 4 and inserts language addressing the concern regarding incorporated towns which would have received the proceeds of the basic privilege tax in the Fiscal Year 2000-2001. The change, she explained, would bring the unincorporated towns back to the amount which they, without the privilege tax, would have otherwise received. Mr. Leavitt recognized the original solution to the town problem was in NRS which, he noted, would be deleted in S.B. 254, as it deals with the previous formula for the distribution of the basic privilege tax. The proposal has been written, he pointed out, allowing the language, "as that section existed on July 1, 1996," to handle repealing one section of statute while continuing to use the statute as a referral point guaranteeing these towns will receive the amount which would have otherwise been received in Fiscal Year 2000-2001.

Chairman O'Connell clarified although the statute would no longer exist, the law shall be enacted at the specified point. Mr. Leavitt said the law shall be referenced for this one provision, which, he noted, has been done in tax law previously. Ms. Guinasso continued, explaining the amendment to section 37 of S.B. 254 was made because of the new scheme set forth for determining enterprise districts changed the timing thereby pushing the notification deadline back to January 1, 1998. Additional language, she indicated, provides the director shall notify each governmental entity determined to be an enterprise district and shall calculate the amount each enterprise district will receive with notification by January 1, 1998, rather than September 15, 1997. She pointed out the section would provide any governmental entity the executive director determines as an enterprise district the opportunity to appeal the determination to the Nevada Tax Commission prior to April 1, 1998, with notification of the

intended appeal given to each of the other local governments and special districts located within the relevant county. The Nevada Tax Commission, she added, is directed to hear the appeal and to issue an order either confirming or reversing the decision of the executive director on or before July 1, 1998. The new definitions of enterprise district, local government and special district are set forth in section 37, subsection 4, she acknowledged.

Ms. Gulnasso concluded by drawing attention to new section 37.5 of the bill which establishes the appropriations requested by the Department of Taxation. Amendments to section 38, she summarized, clarify the placing of these new sections, and, she recognized, sections 12.5 and 37.5 are made effective upon passage and approval.

Mary Walker, Director, Finance/Redevelopment, Carson City, indicated she had received letters from the president and vice president of the Skyline General Improvement District, but noted she has not had the opportunity to review them in depth.

Chairman O'Connell asked Mary E. Henderson, Lobbyist, Washoe County, to share objections from Douglas County with the committee and recognized one concern pertaining to the push for creation of towns and cities out of various districts. The disagreement specified stems from the fact special districts do not feel any obligation to assume responsibilities the counties must perform although the various districts receive a portion of the counties' money. Ms. Henderson explained the technical advisory committee has not finished reviewing special districts nor the way in which these districts will be handled. She maintained the bill would not force the special districts to become a city, but does provide incentives to allow rational mergers and consolidations. She pointed out there had been much participation by general improvement districts (GID) in discussions regarding the tax-distribution formula and noted Chairman O'Connell's request in S.B. 253 for the inclusion of special districts in the continued work of the technical advisory committee to ensure a voice for all entities as the issue progresses.

SENATE BILL 253: Creates legislative committee to study distribution among local governments of revenue from state and local taxes. (BDR 17-193)

Every government affected, Ms. Henderson stressed, will remain at today's dollar level, noting many special districts have never participated in the effected pool of resources to begin with.

Chairman O'Connell noted Senator Raggio had suggested the committee request the amendment be drawn up in its current form and provide notification of the next hearing on the bill for the special districts. She explained special districts have not been addressed in the legislation to provide ongoing discussions with the technical committee. The chairman noted the special districts have been added to the technical committee. She recognized their concerns had been addressed in a technical committee hearing and were found inapplicable to S.B. 254.

Senator Raggio expressed concern regarding the negative feedback from representatives of the special districts, indicating time existed for these opponents to provide further explanation of their concerns for the record. Chairman O'Connell concurred.

Ms. Henderson stated for the record:

> From the perspective of Washoe County, we have always, and I think it is very consistent throughout this whole process we've [we have] been through, been extremely sensitive to the needs and the input from Sun Valley GID, [and] from IVGID, the Incline Valley General Improvement District. We recognize their value in the community and the service that they provide to our citizens. And I think we have really worked hard to try to bring those concerns forward and deal with them rationally. And I also co-chaired the committee that was dealing with the special district issue as well, and hope that as we continue this work that we can clarify what some of their concerns are because I think it's [it is] a bit confusing right now to all of us as to what their true concerns are and what the impact, the negative impacts, of this bill are to them. So, that would be very helpful.

Chairman O'Connell stressed, as a result of testimony before the technical committee, she did not believe the special districts had an understanding of the proposed legislation as they continue to perceive something other than what S.B. 254 contains. She asked for a vote on the amendment.

SENATOR RAGGIO MOVED TO AMEND S.B. 254 WITH THE REQUEST IT BE RETURNED TO THE COMMITTEE FOR REVIEW.

SENATOR O'DONNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

*****

Noting the special districts would be notified prior to the next hearing on the issue, Chairman O'Connell adjourned the meeting at 12:05 p.m.

RESPECTFULLY SUBMITTED:

Angela Culbert

Angela Culbert,
Committee Secretary

APPROVED BY:

Senator O'Connell

Senator Ann O'Connell, Chairman

DATE:_____

SENATE BILL 254**

PROPOSED AMENDMENT by the SENATE COMMITTEE ON

GOVERNMENT AFFAIRS

(Prepared by Committee Counsel)

Amend the preamble of the bill, page 1, by deleting lines 1 through 6.

Amend sec. 4, pages 1 and 2, by deleting lines 17 through 20 on page 1 and lines 1 through 12 on page 2 and inserting:

"**Sec. 4.** *"Enterprise district" means a governmental entity which:*

1. Is not a county, city or town;

2. Receives any portion of the proceeds of a tax which is included in the fund; and

3. Is designated by the executive director as an enterprise district pursuant to the provisions of section 12.5 of this act.".

Amend sec. 8, page 2, line 25, by deleting the period and inserting:

"*with a separate account for Carson City and each county.*".

Amend sec. 11, page 5, line 8, by deleting "*3*" and inserting "*4*".

Amend the bill as a whole by adding a new section designated sec. 12.5, following sec. 12, to read as follows:

"**Sec. 12.5** 1. *The executive director shall determine whether a governmental entity which is not a county, city or town is an enterprise district.*

2. In determining whether a governmental entity is an enterprise district, the executive director shall consider:

(a) Whether the governmental entity should account for substantially all of its operations in an enterprise fund as that term is defined in NRS 354.517;

(b) The number and type of governmental services that the governmental entity provides;

(c) Whether the governmental entity provides a product or a service directly to a user of that product or service including, without limitation, water, sewerage, television and sanitation; and

(d) Any other factors the executive director deems to be relevant in determining whether a governmental entity is an enterprise district.".

Amend sec. 14, page 6, by deleting lines 30 and 31 and inserting:

"3. The governing bodies of two or more local governments or special districts shall not enter into more than one cooperative agreement pursuant to subsection 1 that involves the same local governments or special districts.";

Amend sec. 14, page 7, line 10, by deleting *"by unanimous consent.";*

Amend the bill as a whole by adding a new section designated sec. 18.5, following sec. 18, to read as follows:

"Sec. 18.5. NRS 371.230 is hereby amended to read as follows:

371.230 Except as otherwise provided in NRS 371.1035 [,] *or 482.180,* money collected by the department for privilege taxes and penalties pursuant to the provisions of

this chapter must be deposited with the state treasurer to the credit of the motor vehicle fund.".

Amend sec. 21, page 14, line 13, by deleting "*6.*" and inserting "*5.*".

Amend the bill as a whole by adding a new section designated sec. 21.5, following sec. 21, to read as follows:

"Sec. 21.5. NRS 377.080 is hereby amended to read as follows:

377.080 1. A local government *or special district* which receives revenue [from the supplemental city-county relief tax pursuant to NRS 377.057] *pursuant to sections 10, 11 and 12 of this act* may pledge not more than 15 percent of that revenue to the payment of any general obligation bond or revenue bond issued by the local government pursuant to chapter 350 of NRS.

2. Any revenue pledged pursuant to subsection 1 for the payment of a general obligation bond issued by a local government pursuant to chapter 350 of NRS shall be deemed to be pledged revenue of the project for the purposes of NRS 350.020.

3. For bonds issued pursuant to this section before July 1, 1998, by a local government, special district or enterprise district:

(a) A pledge of 15 percent of the revenue distributed pursuant to sections 10, 11 and 12 of this act is substituted for the pledge of 15 percent of the revenue distributed pursuant to NRS 377.057, as that section existed on January 1, 1997; and

(b) A local government, special district or enterprise district shall increase the percentage specified in paragraph (a) to the extent necessary to provide a pledge to those bonds that is equivalent to the pledge of 15 percent of the amount that would have been received by that local government or special district pursuant to NRS 360.057, as that section existed on January 1, 1997.

4. As used in this section, unless the context otherwise requires:

(a) "Enterprise district" has the meaning ascribed to it in section 4 of this act.

(b) "Local government" has the meaning ascribed to it in section 6 of this act.

(c) "Special district" has the meaning ascribed to it in section 7 of this act.

Amend sec. 35, page 26, line 13, by deleting "average".

Amend sec. 35, page 26, line 22, by deleting "average".

Amend sec. 35, page 26, by deleting lines 24 and 25 and inserting:

"3. For the purposes of this section:

(a) For any unincorporated town to which the provisions of subsection 5 of NRS 354.5987, as that section existed on July 1, 1996, applied, the amounts described in subparagraphs (1) and (2) of paragraph (a) of subsection 2 must be adjusted to equal the amounts that could have been received by that unincorporated town but for the provisions of subsection 5 of NRS 354.5987, as that section existed on July 1, 1996.

(b) The fiscal year ending on June 30, 1999, is the initial year of distribution.".

Amend sec. 35, page 26, line 26, by deleting "4." and inserting:

"4. For fiscal year 2000-2001, the executive director of the department of taxation shall increase the amount which would otherwise be allocated pursuant to subsection 2 of section 10 of this act to each unincorporated town which was created after July 1, 1980, and before July 1, 1997, for which the Nevada tax commission established the allowed revenue from taxes ad valorem or basic ad valorem revenue pursuant to subsection 4 of NRS 354.5987, as that section existed on July 1, 1996, by an amount equal to the amount of basic privilege tax that would have been distributed to the unincorporated town:

(a) Pursuant to NRS 482.181, as if the provisions of NRS 482.181 which existed on July 1, 1996, were still in effect; and

(b) As if the tax rate for the unincorporated town for the fiscal year beginning on July 1, 1980, were a rate equal to the average tax rate levied for the fiscal year beginning on July 1, 1980, by other unincorporated towns included in the same common levy authorized by NRS 269.5755 which were in existence on July 1, 1980.

5. The additional amount of money allocated to an unincorporated town pursuant to subsection 4 must continue be treated as a regular part of the amount allocated to the unincorporated town for the purposes of determining the allocation for the town pursuant to subsection 2 of section 10 of this act for all future years.

6.".

Amend sec. 37, page 28, line 26, by deleting "September 15, 1997," and inserting "January 1, 1998,".

Amend sec. 37, page 28, by deleting lines 27 through 30 and inserting:

"of the department of taxation shall:

(a) Notify each governmental entity he determines is an enterprise district pursuant to section 12.5 of this act of that designation; and

(b) Calculate the amount each enterprise district will receive pursuant to subsection 1 of section 10 of this act.

2. Any governmental entity that the executive director determines is an enterprise district pursuant to section 12.5 of this act may appeal that determination to the Nevada tax commission on or before April 1, 1998. The governing body of the governmental entity must notify each of the other local governments and special districts that is located in the same county of the appeal.

3. The Nevada tax commission shall convene a hearing on the appeal and issue an order confirming or reversing the decision of the executive director on or before July 1, 1998.

4. As used in this section:

(a) "Enterprise district has the meaning ascribed to it in section 4 of this act.

(b) "Local government" has the meaning ascribed to it in section 6 of this act.

(c) "Special district" has the meaning ascribed to it in section 7 of this act.".

Amend the bill as whole by adding a new section designated sec. 37.5, following sec. 37, to read as follows:

"Sec. 37.5. 1. There is hereby appropriated from the state general fund to the department of taxation for the personnel, equipment and costs of operation necessary to administer the provisions of this act:

For the fiscal year 1997-98..... $137,814

For the fiscal year 1998-99..... $127,200

2. Any balance of the sums appropriated by subsection 1 of this section remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 and reverts to the state general fund as soon as all payments of money committed have been made.".

Amend sec. 38, page 28, line 31, by deleting:

"12, 13 and 37" and inserting:

"12, 12.5, 13, 37 and 37.5".

[The proposed amendment changes the definition of "enterprise district" and enables the Executive Director of the Department of Taxation to determine which districts are enterprise districts for the purposes of the bill, amends NRS 377.080 to ensure that the effect of the changes made by the bill do not impair the bondholder contracts for any bonds issued before the effective date of the bill, ensures that the provisions of subsection 5 of NRS 354.5987 (added in S.B. 556 of the 68th session) do not apply to the calculations made

pursuant to section 35 of the bill for an unincorporated town, adds a provision which increases the allocation made pursuant to subsection 2 of section 10 of the bill for the fiscal year 2000-2001 for unincorporated towns that would have received a distribution of the proceeds of the basic privilege tax beginning in fiscal year 2000-2001 by the amount the town would have received but for the provisions of this bill and includes the amount in the base for the town for future years, adds an appropriation to the Department of Taxation for costs associated with the implementation of the bill and makes technical corrections to the bill.]

Section-by-Section Analysis of S.B. 254

(as proposed to be amended)

(The changes made to S.B. 254 by the proposed amendment are highlighted.

Sections 1-3. Directory language and definition sections.

Sec. 4. Defines, for the purposes of the bill, an "enterprise district" to be a governmental entity which receives any portion of the proceeds of a tax which is included in the fund, which is not a city, county or a town and which the executive director of the department of taxation determines is an enterprise district pursuant to section 12.5 of the act.

Sec. 5. Definition of the "fund" (the Local Government Tax Distribution Fund).

Sec. 6. Defines, for the purposes of the bill, a "local government" to be a city, county or town only.

Sec. 7. Defines, for the purposes of the bill, a "special district." A special district is any governmental entity which receives money from one of the taxes included in the fund and which is not a local government or an enterprise district. An example of a special district is a general improvement district.

Sec. 8. Creates the fund as a special revenue fund in the state treasury with a separate account for each county. Makes the executive director of the department of taxation the administrator of the fund. {The fund contains the following taxes: liquor tax, cigarette tax, real property transfer tax, basic city-county relief tax, supplemental city-county relief tax and the basic motor vehicle privilege tax, except a for a portion allocated to the school districts.}

Sec. 9. Qualifies the governmental entities that will receive money from the fund. Unless a governmental entity received, before July 1, 1998, money from one of the taxes included in the fund or unless the governmental entity complies with the provisions of section 15, it will not receive money from the fund.

Sec. 10. Sets forth the basic formula for distributing the money in the fund. After the establishment of the initial amount to be allocated to each enterprise district, special district and local government pursuant to section 35, the enterprise districts receive the same amounts that they received in the immediately preceding fiscal year and the local governments and special districts receive amounts equal to the amounts they received in the immediately preceding year adjusted for growth pursuant to the Consumer Price Index.

Sec. 11. Sets forth the calculations the executive director must perform each month for the allocation of the money in the fund. Also directs the state treasurer to distribute the money in the fund on a monthly basis.

Subsection 2. Establishes the base monthly allocation which is one-twelfth of the amount calculated in section 10.

Subsection 3. If the executive director determines there is not enough money in the account to allocate to each enterprise district, local government and special district the amounts they should receive pursuant to subsection 2, he must prorate and allocate to each governmental entity an amount equal to the percentage the governmental entity would have received pursuant to subsection 2.

Subsection 4. Unless a governmental entity received less than the amount it should have received pursuant to subsection 2 for a preceding month of the fiscal year (see

subsection 5), the executive director shall, after the base monthly allocation, allocate any money remaining in the account to the local governments in the county based on the change in population and the change in assessed valuation of property in the local government and to the special districts in the county based on the change in assessed valuation of property in the special district only.

Subsection 5. Requires the executive director to ensure that each enterprise district, special district and local government receives at least the base monthly allocation for each preceding month of the fiscal year before he allocates any extra money remaining in the account pursuant to subsection 4.

Subsection 6. Provides for the determination of the change in population of local governments for the purposes of subsection 4.

Subsections 7, 8 and 9. Requires the executive director to provide estimates to the governmental entities of the amounts they will receive from the fund for that fiscal year and allows the governmental entities to use those estimates for preparing their budgets.

Sec. 12. Requires the executive director to ensure that each governmental entity will receive at least the amount of money that was pledged to secure the payment of any bonds or other obligations from any tax which is included in the fund.

Sec. 12.5. Sets forth the criteria the executive director must use to determine whether a governmental entity is an enterprise district. The criteria include whether the governmental entity should account for substantially all of its operations in an enterprise fund, the number and type of governmental services that the governmental entity provides, whether the governmental entity provides services such as water, sewerage,

television or sanitation directly to a user of those services and any other factors the executive director deems to be relevant.

Sec. 13. Subsection 1. Prohibits an enterprise district from pledging any portion of the revenues from any of the taxes included in the fund before the effective date of the act (July 1, 1998) to secure the payment of bonds or obligations.

Subsection 2. Requires the executive director to ensure that a governmental entity that is created between July 1, 1996, and July 1, 1998, does not, before the effective date of the act, receive money from the taxes which will be included in the fund and thereby be able to participate in the distribution of the money in the fund unless they provide the same governmental services that governmental entities are required to provide pursuant to section 15 to be included in the distribution of the money in the fund.

Sec. 14. Sets forth the procedure by which a local government or special district within the same county may agree to distribute the money in the county's account in the fund pursuant to an alternative formula.

Subsection 1. The governing body of each party to a cooperative agreement must agree to the terms of the agreement by majority vote.

Subsection 2. Requires the executive director to be notified of any agreements for alternative formulas.

Subsection 3. Prohibits a local government or special district from entering into more than one agreement.

Subsection 4. The terms of two or more cooperative agreements in a county must not conflict.

Subsection 5. A local government or special district that does not wish to participate in a cooperative agreement will continue to receive its share from the fund pursuant to the provisions of sections 10 and 11.

Subsection 6. The governing body of each party to a cooperative agreement must agree to the terms of the agreement by majority vote and may amend the terms of the agreement by majority vote. The terms may only be amended once during the first two years the agreement is in effect and once every year thereafter.

Subsection 7. The governing body of each party to a cooperative agreement must by unanimous consent agree to terminate the agreement.

Subsections 8 and 9. The executive director must continue to calculate the amount that each party to a cooperative agreement would receive under the terms of the regular formula. If an agreement is terminated, the parties would receive the amounts to which they would be entitled under the terms of the regular formula.

Sec. 15. Provides the procedure by which a local government or special district that is created after July 1, 1998, may be included in the distribution of the money in the fund. Such a local government or special district must provide police protections and at least two of the following services: fire protection; construction, maintenance and repair of roads; or parks and recreation. The governing body must submit a request to the executive director on or before December 31 of the year immediately preceding the first fiscal year that the local government or special district would receive money from the fund. The executive director then analyzes the request and makes a recommendation to the committee on local government finance. The committee on local government finance reviews the findings of the executive director and if it determines that an adjustment is

appropriate, it submits a recommendation to the Nevada tax commission. If the Nevada tax commission determines that the adjustment is appropriate, it orders the executive director to make the adjustment.

Sec. 16. Makes changes necessary for consistency with new provisions.

Sec. 17. Includes the tax on liquor in the fund.

Sec. 18. Includes the tax on cigarettes in the fund.

Sec. 18.5. Resolves conflict of NRS 482.180 with NRS 371.230 which requires that all money collected by the department of motor vehicles and public safety for privilege taxes and penalties be deposited to the credit of the motor vehicle fund.

Sec. 19. Includes the tax on the transfer of real property in the fund.

Sec. 20. Includes the basic city-county relief tax in the fund.

Secs. 21 and 22. Includes the supplemental city-county relief tax in the fund.

Secs. 23 and 24. Provides for adjustments in the allowed taxes ad valorem, population and assessed valuation of governmental entities when the functions of one governmental entity are assumed by another.

Sec. 25. Locates sections 23 and 24 within the Local Government Budget Act in Chapter 354 of NRS.

Secs. 26 to 30. Make changes necessary for consistency with new provisions.

Secs. 31 and 32. Includes the basic motor vehicle privilege tax in the fund. The portion of the tax which is allotted to the school district of the county must receive its share of the money in the county's account in the fund that is derived from this tax before any remaining money may be distributed to the other governmental entities.

Secs. 33 and 34. Make changes necessary for consistency with new provisions.

Sec. 35. Sets the amounts the executive director shall allocate to the enterprise districts, local governments and special districts for the initial year of distribution pursuant to the new formula. The initial year of distribution is the fiscal year ending on June 30, 1999.

Subsection 1. Sets the amount that each enterprise district will receive at the average amount that the enterprise district received from the proceeds from each tax included in the fund for the fiscal years ending on June 30, 1996, and June 30, 1997. Each enterprise district will receive this same amount each year pursuant to the new formula.

Subsection 2. Sets the amount that each local government and special district will receive in the initial year of distribution by taking the average amount that the local government or special district received for the fiscal years ending on June 30, 1996, and June 30, 1997, and adjusting that amount by the total of the amounts received by the local governments and special districts located in the same county and the percentage change in the Consumer Price Index for the period from July 1, 1997, to December 31, 1997.

Subsection 3. Requires the amount that an unincorporated town, to which the provisions of subsection 5 of NRS 354.5987 applied on July 1, 1996, will receive pursuant to subsection 2 be adjusted so the amount that the unincorporated town actually receives is not lessened by the effect of subsection 5 of NRS 354.5987 (as applied on July 1, 1996) (Ensures that the provisions of subsection 5 of NRS 354.5987 (added in S.B. 556 of the 68th session) do not apply to the calculations made pursuant to section 35 of the bill for an unincorporated town.

Subsection 4. Increases the allocation made pursuant to subsection 2 of section 10 of the bill for the fiscal year 2000-2001 for unincorporated towns that would have received a distribution of the proceeds of the basic privilege tax beginning in fiscal year 2000-2001 by the amount the unincorporated town would have received but for the provisions of this bill and includes the amount in the base of the unincorporated town for future years.

Sec. 36. Provides the procedure by which the governing body of a local government or special district that receives, before July 1, 1998, any portion of the proceeds from a tax which is included in the fund may petition for an adjustment to the amounts it will receive from the fund for the initial year of distribution. The governing body must request the adjustment on or before December 31, 1997. The governing body submits the request to the executive director who then analyzes the request and makes a recommendation to the committee on local government finance. The committee on local government finance reviews the findings of the executive director and if it determines that an adjustment is appropriate, it submits a recommendation to the Nevada tax commission. If the Nevada tax commission determines that the adjustment is appropriate, it orders the executive director to make the adjustment.

Sec. 37. Requires the executive director, on or before January 1, 1998, to notify each governmental entity he determines is an enterprise district of that designation and to calculate the amount each enterprise district will receive. Also allows an enterprise district to appeal the executive director's determination to the Nevada tax commission on or before April 1, 1998. Requires the appealing enterprise district to notify the other local governments and special districts that are located in the same county. Requires the

Nevada tax commission to issue an order confirming or reversing the decision of the executive director on or before July 1, 1998.

Sec. 37.5. Adds an appropriation of $137,814 for fiscal year 1997-1998 and an appropriation of $127,200 for fiscal year 1998-1999 for the costs associated with the implementation of the bill. Provides that any balance of the sums appropriated reverts to the state general fund.

Sec. 38. Effective dates. Sections 1 to 7, inclusive, 12, 12.5, 13, 37 and 37.5 become effective upon passage and approval. All others become effective on July 1, 1998.

MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Sixty-ninth Session
May 5, 1997

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 2:12 p.m., on Monday, May 5, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ann O'Connell, Chairman
Senator William J. Raggio, Vice Chairman
Senator William R. O'Donnell
Senator Raymond C. Shaffer
Senator Dina Titus
Senator Michael A. (Mike) Schneider

COMMITTEE MEMBERS ABSENT:

Senator Jon C. Porter (Excused)

STAFF MEMBERS PRESENT:

Dana R. Bennett, Committee Policy Analyst
Kim Marsh Gulnasso, Committee Counsel
Deborah A. Riggs, Committee Secretary

OTHERS PRESENT:

Randal R. Munn, Deputy Attorney General, Civil Division, Office of the Attorney General
Mary E. Henderson, Lobbyist, Washoe County
Mike Harper, Washoe County
Irene E. Porter, Lobbyist, Builders Association of Western Nevada
Noel E. Manuokian, Lobbyist, General Counsel, Incline Village General Improvement District
Patrick Finnigan, General Manager, Incline Village General Improvement District
Marvin Leavitt, Lobbyist, Director, Intergovernment/Community Relations and Policy Research, City of Las Vegas
Mary C. Walker, Lobbyist, Director, Finance/Redevelopment, Carson City

Senator O'Donnell voiced it was important to obtain information on the length of time each agency took for turnaround. He also indicated the amount of money expended for expedited turnaround would be an important measurement of the situation.

The chairman closed the hearing on S.B. 321 and S.B. 322. She indicated Noel E. Manoukian, Lobbyist, General Counsel, Incline Village General Improvement District (IVGID), requested the ability to address the committee regarding concerns expressed in correspondence to Senator O'Connell. The chairman requested Mr. Manoukian explain why the Incline Village General Improvement District should be treated like a city or a county government and the reason taxpayers should continue to pay for special-purpose districts in the manner which occurred in error over the last 18 years. *

Mr. Manoukian introduced Patrick Finnigan, General Manager, Incline Village General Improvement District (IVGID). Mr. Manoukian asserted without attempting to discriminate against governmental entities, there was a real basis for distinction between the governments situated within the Lake Tahoe Basin with the Tahoe Regional Planning Agency's (TRPA) presence there. He maintained there was a natural stunting of growth by virtue of the use of the TRPA's regulatory powers. Also, since the early 1970s when Governor O'Callaghan, by executive order, implemented an Environmental Protection Agency federal order and mandate, all sewage must be exported out of the basin at tremendous expense to those little governments within the basin that have the responsibility of exporting sewage out of the basin, Mr. Manoukian expounded.

Mr. Manoukian contended laws must be uniform under the United States Constitution. Chairman O'Connell inquired the exact problem the IVGID had with the legislation, as the district was held harmless and would be receiving the same revenue base. Mr. Manoukian emphasized he was not only representing IVGID, but other governments who might be inflicted and impaired by the proposed formula change in Senate Bill (S.B.) 254.

SENATE BILL 254: Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

Chairman O'Connell insisted the IVGID was the only government which had expressed dissatisfaction and pointed out for 18 months, the subcommittee

from the Senate Concurrent Resolution (S.C.R.) 40 of the Sixty-eighth Session study worked with all 17 counties and there were no complaints from the other parties. The chairman inquired whether there was someone [with a legitimate issue] of which the subcommittee was unaware.

SENATE CONCURRENT RESOLUTION 40

OF THE SIXTY-EIGHTH SESSION: Directs Legislative Commission to conduct interim study of laws relating to distribution among local governments of revenue from state and local taxes.

Mr. Manoukian acknowledged early on and during the interim between the 1995 and 1997 legislative sessions, there were a number of other entities under representation. He asserted IVGID was one of the "ballcarriers" at this point and acknowledged IVGID was not adversely affected. Mr. Manoukian expressed concern regarding future amendments, questioning whether it was the interest of the legislative body to distinguish related general improvement districts in an adverse way in comparison to cities and counties.

Chairman O'Connell maintained the whole formula was related to services and money, something the Supplemental City County Relief Tax (SCCRT) financed. She drew attention to one of the points in correspondence from Mr. Manoukian which addressed a new taxing unit connected to the water district. Chairman O'Connell stated the new taxing unit was a separate issue, having little or nothing to do with the SCCRT. The chairman stressed the determination of the study was county and city governments had to provide a level of service for the population groups they support. An enterprise district did not have the same responsibility, she remarked. Senator O'Connell pointed out only 40 percent of enterprise districts received any SCCRT, the other 60 percent did not receive any of the distribution. However, the chairman emphasized, 100 percent of the population were paying for enterprise districts and were not receiving the benefit of services. Chairman O'Connell explained that to be one of the critical issues of concern to the cities and counties. The chairman declared a person on one side of the street was paying 100 percent of their cost and was also paying for the person across the street in an enterprise district, who was having his/her services subsidized.

Mr. Finnigan indicated IVGID opposed the bill because it was discriminatory toward smaller governments which were more limited in function than counties and cities, which were more general in function. He expressed support for the underlying premise of the bill, which directed governmental revenues from SCCRT taxation to the governmental functions which all governments perform, whether the governments were small, general improvement districts, counties, or cities. Mr. Finnigan explained the only general improvement district with problems with the bill was the Sun Valley General Improvement District (Sun Valley GID). Chairman O'Connell pointed out the Sun Valley GID did not have problems with the bill as amended. The amendment provided the Department of Taxation the ability to differentiate between who should be sharing in the SCCRT and what was truly an enterprise district.

Mr. Finnigan expounded enterprise functions of government should be self-supporting, intimating all enterprise functions should be required to be self-sufficient in governments across the board. He declared governments such as Washoe and Clark counties supported enterprise-type functions with SCCRT revenues. Depending upon the manner in which responsibilities were accounted, specific enterprise-type functions could be disguised as governmental functions, Mr. Finnigan alleged. Those governments capable of disguising functions could receive more revenues from the bill than those governments incapable of the same disguise. Mr. Finnigan advocated the adoption of a uniform method of accounting for governmental functions in order to ascertain which functions of government were worthy of governmental revenue. Once the uniform accounting method was devised, a mechanism should be developed to allocate to all governments on the basis of their governmental functions, rather than enterprise versus non-enterprise, he testified.

Chairman O'Connell expounded Mr. Finnigan had the opportunity to speak with Guy S. Hobbs (Lobbyist, Nevada Association of Counties), who informed Mr. Finnigan hundreds of formulas were run by the S.C.R. 40 of the Sixty-eighth Session technical committee, and the formula suggested by Mr. Finnigan was one which was run. Mr. Finnigan agreed Mr. Hobbs did notify him his suggestion had been considered by the technical committee. Again, Mr. Finnigan summarized many of the northern Nevada and Lake Tahoe Basin general improvement districts supported the underlying philosophy of the legislation. They opposed the legislation due to the discriminatory treatment of small general-purpose governments.

Chairman O'Connell pointed out the premise if the small government had the responsibility of the larger governments who were constantly running short of money, it was simply not a thing which could be afforded. The chairman emphasized the premise of having one taxpayer subsidize another taxpayer for a benefit they did not receive was unfair. She expounded if a specific standard and quality of life was chosen by a taxpayer, the taxpayer ought to be responsible for paying for the specified standard. Chairman O'Connell drew attention to the person down the street who did not feel compelled to compromise his/her standard of living to pay for another person's standard of living. The chairman stated that was the bottom line to this issue.

Marvin Leavitt, Lobbyist, Director, Intergovernment/Community Relations and Policy Research, City of Las Vegas, explained the bill and amendments contained several factors which would assess local governments, depending upon the situation of the local government (Exhibit C and Exhibit D). Mr. Leavitt expressed the SCCRT changes from year to year were based on the alteration in assessed valuation. Under the new formula, all governments were guaranteed additional money, which was not the guarantee previously, he stressed. Mr. Leavitt addressed the type of governments in the state were divided in the bill, not by size, but by the type of function performed. He outlined the bill divided entities into general-purpose governments: counties, cities and towns, and special-purpose governments: enterprise funds, and general improvement districts, which provided a more specialized function than the cities, counties and towns.

Mr. Leavitt clarified the bill stated general-purpose governments who could make a determination between the type of expenditures from year to year had advantages over other districts which were special purpose. He exemplified $10,000 devoted to a certain area would be devoted to that specific area forever, essentially, without consideration to what might be more deserving in the current year. Conversely, the witness expressed, general-purpose governments determined whether police, fire, planning, building, street lights or parks would receive funding on an annual basis, in conjunction with the needs of the community. In a special-purpose government, limited functions were provided, and there was no doubt where the money would be allocated. In other words, there was no way elected governing boards could switch and allocate funding between different functions in a year, Mr. Leavitt noted. He explained Carole A. Vilardo, Lobbyist, Nevada Taxpayers Association, contended there ought to be a periodic review to ensure the special-purpose government was still necessary. Mr. Leavitt commented the enterprise districts were

governments who performed no functions other than the enterprise function. Most of them performed a single enterprise function, he added. Mr. Leavitt remarked there was an amended ability in the bill for the executive director of the Department of Taxation to review enterprise districts to ascertain whether governments were true enterprise functions. This would ensure those who perform general-governmental functions were not classified incorrectly, he opined. Mr. Leavitt recognized the general thought was one should not be completing an enterprise function with SCCRT revenue.

Ms. Henderson indicated she was the cochairman of the ongoing committee defining special districts and enterprise districts. As was stated in previous committee meetings, Ms. Henderson admonished the work still was not done. There were many special district areas in need of examination, in terms of special districts, their function and how they were funded, she explained. Ms. Henderson expressed there was a survey without results as yet, and there were several areas where the committee defining special and enterprise districts felt so strongly, there was a companion bill, Senate Bill (S.B.) 253 which also included a special districts representative be added to the technical advisory committee. Ms. Henderson pointed out the importance of the opinions and concerns of special and enterprise districts and advocated the passage of S.B. 253.

SENATE BILL 253: Creates legislative committee to study distribution among local governments of revenue from state and local taxes. (BDR 17-193)

On the issue of enterprise districts, Ms. Henderson conveyed the nature of the issue was very troublesome to the technical advisory committee. She requested the record reflect Washoe County was the only county with an enterprise fund which was funded by General Fund tax dollars. Ms. Henderson emphasized Washoe County contained an enterprise district which was in the same situation as the other districts and expounded the technical advisory committee made every concerted attempt to treat all enterprise and special districts in an equitable manner, despite protestations to the contrary. The intent of the technical advisory committee was always to deal with the funding issues openly and as an issue of public policy in the procedure for continued funding, she maintained. Ms. Henderson again reiterated the technical advisory committee strongly supported the amendment provision in the bill which allowed for an alternative distribution formula in recognition of unique situations. Ms.

Henderson pointed out the unique services provided by Sun Valley GID, which would allow the county to negotiate with the GID to uphold the service level.

Mary C. Walker, Lobbyist, Director, Finance/Redevelopment, Carson City, drew attention to the crux of the testimony provided in opposition to the distribution formula in S.B. 254. Ms. Walker maintained several parties have insinuated there would be a loss in revenue, which was not the case. No entity loses dollars, she asserted.

Ms. Walker pointed out the SCCRT distribution provided to enterprise districts established prior to 1981 when the tax shift occurred. She questioned the fairness of providing 40 percent of the enterprise districts with a portion of the SCCRT, while 60 percent were not allowed the same benefit. Additionally, Ms. Walker explained, one of the goals of the technical advisory committee was to ensure there was sense and equity in the tax formula and not just a sealing of where a district stood at a certain point in time. She expressed the desire to rid the system of the ramifications of the 1981 tax shift that did not relate to servicing the public.

In a few instances in the state, the enterprise district actually subsidized the General Fund, Ms. Walker insisted. She stated as far as equal treatment, the enterprises were treated equally with the other enterprises established. Additionally, Sierra Pacific Power Company handled most of the water-user services provided in Washoe County and did not receive a taxpayers subsidy, which was an equity, Ms. Walker opined. Equity on the taxpayer-to-taxpayer aspect was the goal of the technical advisory committee, she concluded.

Senator O'Donnell stated IVGID was a part of Washoe County and noted it seemed IVGID was left "out of the loop" in this process. The senator expressed Incline Village was a nice place to live, but stressed it seemed Incline Village did not get the same consideration Washoe County received over and over again.

Ms. Henderson contended generally, the county did a fairly good job of handling and working with Incline Village issues and being sensitive to their needs and participating with that community. She maintained Incline Village was a very vital piece of Washoe County and a piece that none of Washoe County, from the heart, wanted to lose. Ms. Henderson pointed out the group was not isolated from Washoe County government. Specifically, Ms. Henderson testified Washoe County was aware of the service IVGID provided at Lake Tahoe and remarked she had been supportive throughout the entire process, had tried to

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Appellant, vs. THE STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION; THE HONORABLE DAN SCHWARTZ, in his official capacity as TREASURER OF THE STATE OF NEVADA; and THE LEGISLATURE OF THE STATE OF NEVADA, Respondents.	Supreme Court No.: 66851 District Court Case No.: 12 OC 00168 1B

JOINT APPENDIX

VOLUME 1 PART 3

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Index to Joint Appendix
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23	Amended Memorandum of Costs and Disbursements	State of Nevada/Dept Taxation	10/09/15	4058-4177
7	Answer	State of Nevada/Dept Tax/ Treasurer	02/01/13	1384-1389
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23	Case Appeal Statement	City of Fernley	11/07/14	4208-4212
1	Complaint	City of Fernley	06/06/12	1-12
21	Defendant Nevada Legislature's Reply in Support of its Motion for Summary Judgment	Nevada Legislature	07/25/14	3747-3768
21	Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs	State of Nevada/Dept Taxation	10/03/14	3863-3928
22	Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs (Cont.)	State of Nevada/Dept Taxation	10/03/14	3929-3947
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2	Exhibits to Joinder in Motion to Dismiss (Cont.)	Nevada Legislature	08/16/12	221-332
1	Joinder in Motion to Dismiss	Nevada Legislature	08/16/12	62-103
7	Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	Nevada Legislature	05/06/14	1421-1423
21	Memorandum of Costs and Disbursements	State of Nevada/Dept Taxation	09/19/14	3788-3793
21	Motion for Costs	State of Nevada/Dept Taxation	09/19/14	3776-3788
12	Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order	City of Fernley	06/18/14	2005-2045
7	Motion for Summary Judgment	City of Fernley	06/13/14	1458-1512
8	Motion for Summary Judgment (Cont.)	City of Fernley	06/13/14	1513-1732
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10	Motion for Summary Judgment (Cont.)	City of Fernley	06/13/14	1917-1948
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1	Motion to Intervene	Nevada Legislature	08/03/12	18-40
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7	Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	05/05/14	1414-1420
7	Nevada Department of Taxation and Nevada Treasurer's Reply to Response to Renewal of Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	05/23/14	1433-1437
12	Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment	State of Nevada/Dept Taxation	07/11/14	2053-2224
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7	Notice of Entry of Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012	State of Nevada/Dept Tax/ Treasurer	12/19/12	1364-1370
7	Notice of Entry of Order Granting A Continuance to Complete Discovery	City of Fernley	10/19/12	1344-1350
3	Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene	Nevada Legislature	09/04/12	651-657
7	Notice of Entry of Order on Defendant's Motion for Extensions of Time to File Answer	State of Nevada/Dept Tax/ Treasurer	11/15/12	1354-1360
1	Notice of Non-Opposition to Legislature's Motion to Intervene	State of Nevada/Dept Tax/ Treasurer	08/06/12	59-61
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3	Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F) (Cont.)	City of Fernley	08/20/12	442-625
2	Opposition to Motion to Nevada Legislature's Motion to Intervene	City of Fernley	08/20/12	324-330
13	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	City of Fernley	07/11/14	2354-2445
14	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2446-2665
15	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2666-2819
16	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2820-2851
17	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2852-2899
4	Opposition to Nevada Legislature's Joinder in Motion to Dismiss	City of Fernley	09/28/12	662-881
5	Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)	City of Fernley	09/28/12	882-1101
6	Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)	City of Fernley	09/28/12	1102-1316
17	Opposition to Nevada Legislature's Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	City of Fernley	07/11/14	2900-2941
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17	Opposition to Plaintiff's Motion for Summary Judgment	Nevada Legislature	07/11/14	2942-3071
18	Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	Nevada Legislature	07/11/14	3072-3292
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20	Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	Nevada Legislature	07/11/14	3515-3567
7	Order (Converting Motion to Dismiss to Motion for Summary Judgment, Setting Briefing Schedule and Dismissing Treasurer)	First Judicial District Court	06/06/14	1451-1457
22	Order and Judgment	First Judicial District Court	10/06/14	3948-4000
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7	Order on Defendant's Motion for Extensions of Time to File Answer	First Judicial District Court	11/13/12	1351-1353
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21	Order Vacating Trial	First Judicial District Court	09/03/14	3773-3775
23	Plaintiff's Motion to Strike, or Alternatively, Motion to Retax Costs	City of Fernley	10/14/14	4178-4189
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7	Reply in Support of Joinder in Motion to Dismiss	Nevada Legislature	10/08/12	1317-1340
3	Reply in Support of Motion to Intervene	Nevada Legislature	08/24/12	626-635
21	Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant Nevada Legislature	City of Fernley	07/25/14	3709-3746

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20	Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant's Nevada Department of Taxation and Nevada Treasurer; Plaintiff's Opposition to Countermotion for Order Dismissing Nevada Department of Taxation	City of Fernley	07/25/14	3641-3673
20	Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendant Nevada Legislature	City of Fernley	07/25/14	3606-3640
21	Reply to Opposition to Countermotion for Order Dismissing Nevada Department of Taxation	State of Nevada/Dept Taxation	08/01/14	3769-3772
3	Reply to Opposition to Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	08/27/12	636-647
20	Reply to Plaintiff's Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	State of Nevada/Dept Taxation	07/25/14	3583-3605
7	Response to Nevada Department of Taxation	City of Fernley	05/16/14	1424-1432
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7	Stipulation and Order for an Extension of Time to File Responses to Discovery Requests; Extend Certain Discovery Deadlines and Extend Time to File Dispositive Motions	Parties/First Judicial District Court	04/11/14	1410-1413
7	Stipulation and Order Regarding Change of Briefing Schedule and Plaintiff's Response to Defendant's Motion to Strike Plaintiff's Jury Demand	Parties/First Judicial District Court	02/19/14	1403-1405
12	Stipulation and Order Regarding Change of Briefing Schedule and Setting Hearing for Oral Argument	Parties/First Judicial District Court	06/25/14	2046-2048
7	Stipulation and Order Regarding Defendant's Motion to Strike Plaintiff's Jury Demand	Parties/First Judicial District Court	10/23/13	1400-1402
3	Stipulation and Order Regarding Joinder to Motion to Dismiss	Parties/First Judicial District Court	09/18/12	658-661
23	Transcript of Hearing	Court Reporter	01/07/15	4213-4267
7	Writ of Mandamus	Nevada Supreme Court	01/25/13	1371-1372

SUMMARY OF RECOMMENDATIONS

LAWS RELATING TO THE DISTRIBUTION AMONG LOCAL GOVERNMENTS OF REVENUE FROM STATE AND LOCAL TAXES
S.C.R. 40

1. The 1997 Session of the Nevada Legislature should consider legislation providing for a new formula for the distribution among the local governments within a county of: the Basic City/County Relief Tax; Supplemental City/County Relief Tax; Tax on Liquor; Tax on Tobacco; Real Property Transfer Tax; and Motor Vehicle Privilege Tax.

2. The 1997 Session of the Nevada Legislature should consider legislation that would provide for appropriate adjustments to the bases of the formula for revenue distribution of one or more local governments when previous functions are taken over or no longer exist.

3. The 1997 Session of the Nevada Legislature should consider legislation to allow two or more local governments within the same county to agree by cooperative agreement to alternative formulae for revenue distribution.

4. The 1997 Session of the Nevada Legislature should consider legislation to provide transitory language allowing a local government to request an adjustment to the base of the formula for revenue distribution purposes.

5. The 1997 Session of the Nevada Legislature should consider legislation providing for the number and type of services required to be provided by a new entity to qualify for inclusion in the formula for revenue distribution and to freeze the revenues of "enterprise" special districts at the base year.

6. The 1997 Session of the Nevada Legislature should consider legislation creating a legislative committee to continue the study of the distribution among local governments of revenue from state and local taxes.

7. That the Legislative Commission direct the S.C.R. 40 Advisory Committee to continue its analyses of local government revenues and to report its findings and recommendations to the Committees on Government Affairs in the Senate and Assembly during the 1997 Session.

ABSTRACT

LAWS RELATING TO THE DISTRIBUTION AMONG LOCAL GOVERNMENTS OF REVENUE FROM STATE AND LOCAL TAXES (S.C.R. 40)

The 68th Session of the Nevada Legislature adopted Senate Concurrent Resolution No. 40 (File No.162, *Statutes of Nevada 1995*, pages 3034-3036), which directed the Legislative Commission to conduct an interim study of the laws relating to the distribution among local governments of revenue from state and local taxes. The study was to include, without limitation, an examination of laws relating to the distribution of revenue and alternate distribution methods to increase distribution efficiencies.

The Legislative Commission appointed a subcommittee of eight legislators and an advisory committee consisting of the Executive Director of the Department of Taxation, and eight local government finance representatives to complete the study and submit any findings and recommendations for legislation to the 69th Session of the Nevada Legislature. The subcommittee held five public hearings in Carson City, Las Vegas and Reno and received testimony primarily regarding the distribution of revenues to local governments from sales tax, liquor tax, cigarette and tobacco products tax, real property transfer tax, fuel taxes and vehicle privilege tax and their respective distribution formulas.

The subcommittee, at a final work session in Carson City, adopted six recommendations for proposed legislation and one recommendation (approved by the Legislative Commission) to continue the advisory committee's work, examining four specific additional revenue issues.

REPORT TO THE 69TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE LAWS RELATING TO THE DISTRIBUTION AMONG LOCAL GOVERNMENTS OF REVENUE FROM STATE AND LOCAL TAXES

I. INTRODUCTION

The following is submitted in compliance with the Senate Concurrent Resolution No. 40 (File No. 162, *Statutes of Nevada 1995, pages 3034-3036*), which directed the Legislative Commission to conduct an interim study on the laws relating to the distribution among local governments of revenue from state and local taxes. The resolution requires that the Legislative Commission report the results of the study and any recommended legislation to the 69th Session of the Nevada Legislature. SCR 40 is included as Appendix A.

The resolution directed that a subcommittee consisting of two members of the Senate standing Committee on Government Affairs, two members of the Senate standing Committee on Taxation, two members of the Assembly standing committee on Government Affairs and two members of the Assembly standing Committee on Taxation appointed by the Legislative Commission conduct the study. The resolution further directed that the subcommittee meet at least six times during the interim (Appendix C) and consult with an advisory committee consisting of the executive director of the department of taxation, two members of the local government advisory committee created pursuant to NRS 266.0165, three members involved in the government of a county, and three members involved in the government of an incorporated city. Members of the subcommittee appointed to conduct the study were:

Senator Ann O'Connell, Chairman	Senator Jon C. Porter
Senator Dean A. Rhoads	Senator Raymond C. Shaffer
Assemblywoman Joan A. Lambert	Assemblyman Bob Price
Assemblyman P.M. Roy Neighbors	Assemblywoman Jeanine Stroth-Coward.

The advisory committee members appointed to conduct the study were:

Michael Pitlock, Director, Department of Taxation

Marvin Leavitt, Las Vegas	Mike Alastuey, Clark County School District
Guy Hobbs, Clark County	Gary Cordes, Fallon
Mary Henderson, Washoe County	Terri Thomas, Sparks
Mary Walker, Carson City	Steve M. Hanson, Henderson.

Legislative Counsel Bureau staff services for the committee were provided by: Kevin D. Welsh, Deputy Fiscal Analyst; Ted A. Zuend, Deputy Fiscal Analyst; Kim Guinasso, Deputy Legislative Counsel; and Terry Cabauatan, Management Assistant, Fiscal Analysis Division. The report represents the findings and recommendations of the subcommittee. Information which affected the recommendations directly are included in either the narrative or the appendices. All supporting documents and meeting minutes are available from the Fiscal Analysis Division of the Legislative Counsel Bureau. The Legislative Commission, at its meeting on October 2, 1996, accepted this report and ordered it and its recommendations transmitted to the members of the 1997 Legislature for consideration and appropriate action. The Legislative Commission further directed the Advisory Committee to continue its analysis of local government revenues and report its findings and recommendations to the Committees on Government Affairs in the Senate and Assembly during the 1997 Session.

II. BACKGROUND

Senate Concurrent Resolution No. 40 was passed to allow the Legislative Commission to review in the interim, laws relating to the distribution among local governments of revenue from state and local taxes. The technical nature of the subject matter and the requirement that comprehensive, heretofore, non-existent databases be compiled did not allow the standing committees of the Legislature time nor the resources to address this subject during session.

The subcommittee considered all of the subject areas identified in S.C.R. 40 as well as several brought before the subcommittee from independent sources during its deliberations. After reviewing all of the oral and written testimony submitted, the committee ultimately decided that it could and should address the following matters: (1) the distribution to local governments within any county (second tier distribution) of the Basic City/County Relief Tax (BCCRT), Supplemental City/County Relief Tax (SCCRT), tax on liquor, tax on cigarettes, real property transfer tax (RPTT) and motor vehicle privilege tax (MVPT) and various related matters providing for a new distribution formula and the application of that formula; (2) the inter and intra-county distribution of motor vehicle fuel taxes (the 1.25 cent and 2.35 cent components of that tax); and (3) the distribution of SCCRT revenue to special districts providing "enterprise" type services.

BCCRT, SCCRT, LIQUOR, CIGARETTES, RPTT and MVPT TAX REVENUE DISTRIBUTION

The six taxes identified above are collected at various regional and local levels, remitted to the state, then distributed back to local governments by various formulas driven either by population or ad valorem tax rates (Appendix D). The subcommittee concluded that none of the existing revenue distribution formulas had any rational basis for distributing new revenue to new growth areas where it was both generated and it needed to meet the demands of the new growth (Appendices E, F, G and H). Therefore, the subcommittee made five recommendations requesting legislation to provide the above identified revenues be placed in one central fund to be distributed according to a rationally based formula which includes provisions for growth and population and assessed valuation, providing for various technical provisions regarding the application of that formula, allowing for the formula to rationally respond to changes in local government structure and providing criteria for newly formed entities wishing to take part in the formula.

The Inter-Intra County Distribution of Motor Vehicle Fuel Tax and SCCRT Distribution to Special Districts

The committee realized that any finding and subsequent recommendations on the above identified subject areas would require the compilation of comprehensive databases resulting from extensive survey research (Appendices J, K, L and M). Therefore, the committee recommended that the Legislative Commission direct the subcommittee's advisory committee to continue the study in the subject areas as follows:

Motor Vehicle Fuel Tax (MVFT)

The advisory committee was to establish a consistent definition for different types of roadways, a survey to establish the comprehensive statewide inventory of the road miles for each type of road provide a per mile maintenance cost for each type of road, a factor for mitigating maintenance costs (snow removal) and establish a formula that would provide for the distribution of revenues, that would reflect a rational assessments of maintenance needs.

Special Districts

The subcommittee again realized that this subject matter would require a comprehensive data base based on extensive survey research. It further realized that the broad spectrum of special districts of Nevada could not be addressed by any one single methodology. Therefore, the advisory committee was directed to focus its effort on those special districts that were providing "enterprise" services only. The subcommittee was further directed to create a survey questionnaire, provide for a uniform and comprehensive completion of that questionnaire and create a comprehensive database from the information gleaned from it and report any findings and recommendations to the 1997 Legislature.

The subcommittee further recommended that the Legislature create a legislative committee to continue the study of the subject matter.

STATE 1 (%) PERCENT COLLECTION FEE and DISTRIBUTION SCHEDULE

The advisory committee was also directed to study the rationale of the state one percent collection fee for the collection and distribution of local government sales tax revenues. Appendix N.

III. FINDINGS and RECOMMENDATIONS

The subcommittee agreed that it had thoroughly researched and considered the subject matters that were within its time and resource constraints and provided for the continued study of the remainder of its charge. A detailed description of the committee's findings and recommendations is contained in Appendix O.

The subcommittee, therefore recommends:

1. The 1997 Session of the Nevada Legislature should consider legislation providing for a new formula for the distribution among the local governments within a county of: the Basic City/County Relief Tax; Supplemental City/County Relief Tax; Tax on Liquor; Tax on Tobacco; Real Property Transfer Tax; and Motor Vehicle Privilege Tax.

2. The 1997 Session of the Nevada Legislature should consider legislation that would provide for appropriate adjustments to the bases of the formula for revenue distribution of one or more local governments when previous functions are taken over or no longer exist.

3. The 1997 Session of the Nevada Legislature should consider legislation to allow two or more local governments within the same county to agree by cooperative agreement to an alternative formula for revenue distribution.

4. The 1997 Session of the Nevada Legislature should consider legislation to provide transitory language allowing a local government to request an adjustment to the base of the formula for revenue distribution purposes.

5. The 1997 Session of the Nevada Legislature should consider legislation providing for the number and type of services required to be provided by a new entity to qualify for inclusion in the formula for revenue distribution and to freeze the revenues of "enterprise" special districts at the base year.

6. The 1997 Session of the Nevada Legislature should consider legislation creating a legislative committee to continue the study of the distribution among local governments of revenue from state and local taxes.

7. The Legislative Commission should direct the S.C.R. 40 Advisory Committee to continue its analyses of local government revenues and to report its findings and recommendations to the Committees on Government Affairs in the Senate and Assembly during the 1997 Session.

Exhibit 2

Nevada Legislature

Exhibit 2

History of SB 254 - 1997

BDR 32-314
Introduced: 04/02/97
Introduced By: Government Affairs

Summary: Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

04/02/97 Read first time. Referred to Committee on Government Affairs. To printer.
04/03/97 From printer. To committee: 3-31 (as BDR); 4-14; 4-30; 5-2; 5-5
05/21/97 From committee: Amend, and do pass as amended.
✓05/22/97 Read second time. Amended. To printer.
05/23/97 From printer. To engrossment. Engrossed. First reprint.✓
✓05/26/97 Read third time. Passed, as amended. Title approved, as amended. Preamble adopted, as amended.
✓05/26/97 Action of passage rescinded.
05/26/97 Re-referred to Committee on Finance. To committee: 5-29
06/02/97 From committee: Amend, and do pass as amended.
✓06/04/97 Read third time. Amended. To printer.
06/05/97 From printer. To re-engrossment. Re-engrossed. Second reprint.✓
✓06/06/97 Read third time. Passed, as amended. Title approved, as amended. Preamble adopted, as amended. To Assembly.
06/07/97 In Assembly. Read first time. Referred to Committee on Government Affairs. To committee: 6-18
07/05/97 From committee: Amend, and re-refer to Committee on Government Affairs.
07/05/97 Placed on Second Reading File.
✓07/05/97 Read second time. Amended.
07/05/97 Re-referred to Committee on Government Affairs. To printer.
07/05/97 From printer. To re-engrossment. Re-engrossed. Third reprint.✓
07/05/97 To committee: 7-4
07/06/97 From committee: Do pass.
07/06/97 Declared an emergency measure under the Constitution.
07/06/97 Taken from General File. Placed on Chief Clerk's desk.
07/07/97 Taken from Chief Clerk's desk. Placed on General File.
✓07/07/97 Read third time. Passed, as amended. Title approved, as amended. To Senate.
07/07/97 In Senate.
07/07/97 Assembly amendment concurred in.
07/07/97 To enrollment.
07/10/97 Enrolled and delivered to Governor.
07/17/97 Approved by the Governor.
07/17/97 Chapter 660.

07/23/97 Sections 1 to 7, inclusive, 12, 12.5, 13, 37 and 38 of this act effective July 17, 1997. Sections 8 to 11, inclusive, and 14 to 36, inclusive, of this act effective July 1, 1998.

Additional discussion, Senate Legislative Affairs and Operations: 4-8

BILL SUMMARY
69th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

SENATE BILL 254
(Enrolled)

Senate Bill 254 provides a mechanism for the Department of Taxation to pool and distribute certain taxes to local governments within each county. The specified taxes are liquor tax, cigarette tax, real property transfer tax, basic city-county relief tax, supplemental city-county relief tax, and the basic motor vehicle privilege tax. The bill also authorizes the director of the Department of Taxation to designate enterprise districts and prohibits such districts from using tax revenue for future bonding purposes.

Most of the sections of this bill are effective on July 17, 1997. The sections that implement and require the use of the new formula are effective on July 1, 1998.

SENATE BILL NO. 254–COMMITTEE ON GOVERNMENT AFFAIRS

APRIL 2, 1997

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION – Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to taxation; revising the formulas for the distribution of the proceeds of certain taxes; prohibiting certain governmental entities from pledging certain revenues to secure the payment of bonds or other obligations; revising the rate certain governmental entities must not exceed if levying an additional tax ad valorem under certain circumstances; requiring the executive director to allocate to certain governmental entities an amount equal to an amount calculated by using the average amount received from certain taxes for 2 fiscal years under certain circumstances; and providing other matters properly relating thereto.

WHEREAS, The legislature finds and declares that a general law cannot be made applicable for all provisions of this act because of the economic diversity of the local governments of this state, the unusual growth patterns in certain of those local governments and the special conditions experienced in certain counties related to the need to provide basic services; now, therefore,

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

Section 1. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. *As used in sections 2 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"County" includes Carson City.*

Sec. 4. *"Enterprise district" means any of the following governmental entities:*

1. Carson Water Subconservancy District;

2. Douglas County Sewer Improvement District No. 1;

3. Elk Point Sanitation District;
4. Elko Convention and Visitors Authority;
5. Elko Television District;
6. Eureka County TV District;
7. Kyle Canyon Water District;
8. Lander County Sewer and Water District No. 2;
9. Minden Gardnerville Sanitation District;
10. Stagecoach General Improvement District;
11. Sun Valley Water and Sanitation District;
12. Tahoe-Douglas District (sewer);
13. Verdi Television Maintenance District; and
14. Willowcreek General Improvement District.

Sec. 5. "Fund" means the local government tax distribution fund created pursuant to section 8 of this act.

Sec. 6. "Local government" means any county, city or town that receives any portion of the proceeds of a tax which is included in the fund.

Sec. 7. "Special district" means a governmental entity that receives any portion of the proceeds of a tax which is included in the fund and which is not:

1. A county;
2. A city;
3. A town; or
4. An enterprise district.

Sec. 8. The local government tax distribution fund is hereby created in the state treasury as a special revenue fund. The executive director shall administer the fund.

Sec. 9. Except as otherwise provided in section 15 of this act, each:

1. Local government that receives, before July 1, 1998, any portion of the proceeds of a tax which is included in the fund;

2. Special district that receives, before July 1, 1998, any portion of the proceeds of a tax which is included in the fund; and

3. Enterprise district,

is eligible for an allocation from the fund in the manner prescribed in section 10 of this act.

Sec. 10. 1. On or before July 1 of each year, the executive director shall allocate to each enterprise district an amount equal to the amount that the enterprise district received from the fund in the immediately preceding fiscal year.

2. Except as otherwise provided in sections 11 and 14 of this act, the executive director, after subtracting the amount allocated to each enterprise district pursuant to subsection 1, shall allocate to each local government or special district which is eligible for an allocation from the fund pursuant to section 9 of this act an amount from the fund that is equal to the amount allocated to the local government or special district for the preceding fiscal

year multiplied by one plus the percentage change in the Consumer Price Index (All Items) for the year ending on December 31 immediately preceding the year in which the allocation is made.

Sec. 11. 1. Except as otherwise provided in section 14 of this act, the executive director shall estimate monthly the amount each local government, special district and enterprise district will receive from the fund pursuant to the provisions of this section.

2. The executive director shall establish a base monthly allocation for each local government, special district and enterprise district by dividing the amount determined pursuant to section 10 of this act for each local government, special district and enterprise district by 12 and the state treasurer shall, except as otherwise provided in subsections 3, 4 and 5, remit monthly that amount to each local government, special district and enterprise district.

3. If, after making the allocation to each enterprise district for the month, the executive director determines there is not sufficient money available in the county's account in the fund to allocate to each local government and special district the base monthly allocation determined pursuant to subsection 2, he shall prorate the money in the account and allocate to each local government and special district an amount equal to the percentage of the amount that the local government or special district received from the total amount which was distributed to all local governments and special districts within the county for the fiscal year immediately preceding the year in which the allocation is made. The state treasurer shall remit that amount to the local government or special district.

4. Except as otherwise provided in subsection 5, if the executive director determines that there is money remaining in the county's account in the fund after the base monthly allocation determined pursuant to subsection 2 has been allocated to each local government, special district and enterprise district, he shall immediately determine and allocate each:

(a) Local government's share of the remaining money by:

(1) Multiplying one-twelfth of the amount allocated pursuant to section 10 of this act by one plus the sum of the:

(I) Percentage change in the population of the local government for the fiscal year immediately preceding the year in which the allocation is made, as certified by the governor pursuant to NRS 360.285 except as otherwise provided in subsection 6; and

(II) Average percentage change in the assessed valuation of taxable property in the local government, except any assessed valuation attributable to the net proceeds of minerals, over the 5 fiscal years immediately preceding the year in which the allocation is made; and

(2) Using the figure calculated pursuant to subparagraph (1) to calculate and allocate to each local government an amount equal to the proportion that the figure calculated pursuant to subparagraph (1) bears to

the total amount of the figures calculated pursuant to subparagraph (1) of this paragraph and subparagraph (1) of paragraph (b), respectively, for the local governments and special districts located in the same county multiplied by the total amount available in the account; and

(b) Special district's share of the remaining money by:

(1) Multiplying one-twelfth of the amount allocated pursuant to section 10 of this act by one plus the average change in the assessed valuation of taxable property in the special district, except any assessed valuation attributable to the net proceeds of minerals, over the 5 fiscal years immediately preceding the year in which the allocation is made; and

(2) Using the figure calculated pursuant to subparagraph (1) to calculate and allocate to each special district an amount equal to the proportion that the figure calculated pursuant to subparagraph (1) bears to the total amount of the figures calculated pursuant to subparagraph (1) of this paragraph and subparagraph (1) of paragraph (a), respectively, for the local governments and special districts located in the same county multiplied by the total amount available in the account.

The state treasurer shall remit the amount allocated to each local government or special district pursuant to this subsection.

5. The executive director shall not allocate any amount to a local government or special district pursuant to subsection 4, unless the amount distributed and allocated to each of the local governments and special districts in the county in each preceding month of the fiscal year in which the allocation is to be made was at least equal to the base monthly allocation determined pursuant to subsection 2. If the amounts distributed to the local governments and special districts in the county for the preceding months of the fiscal year in which the allocation is to be made were less than the base monthly allocation determined pursuant to subsection 2 and the executive director determines there is money remaining in the county's account in the fund after the distribution for the month has been made, he shall:

(a) Determine the amount by which the base monthly allocations determined pursuant to subsection 2 for each local government and special district in the county for the preceding months of the fiscal year in which the allocation is to be made exceeds the amounts actually received by the local governments and special districts in the county for the same period; and

(b) Compare the amount determined pursuant to paragraph (a) to the amount of money remaining in the county's account in the fund to determine which amount is greater.

If the executive director determines that the amount determined pursuant to paragraph (a) is greater, he shall allocate the money remaining in the county's account in the fund pursuant to the provisions of subsection 3. If the executive director determines that the amount of money remaining in the county's account in the fund is greater, he shall first allocate the money necessary for each local government and special district to receive the base monthly allocation determined pursuant to subsection 2 and the state treasurer shall remit that money so allocated. The executive director shall allocate any additional money in the county's account in the fund pursuant to the provisions of subsection 4.

6. If the Bureau of the Census of the United States Department of Commerce issues population totals that conflict with the totals certified by the governor pursuant to NRS 360.285, the percentage change calculated pursuant to paragraph (a) of subsection 3 must be an estimate of the change in population for the calendar year, based upon the population totals issued by the Bureau of the Census.

7. On or before February 15 of each year, the executive director shall provide to each local government, special district and enterprise district a preliminary estimate of the revenue it will receive from the fund for that fiscal year.

8. On or before March 15 of each year, the executive director shall:

(a) Make an estimate of the receipts from each tax included in the fund on an accrual basis for the next fiscal year in accordance with generally accepted accounting principles, including an estimate for each county of the receipts from each tax included in the fund; and

(b) Provide to each local government, special district and enterprise district an estimate of the amount that local government, special district or enterprise district would receive based upon the estimate made pursuant to paragraph (a) and calculated pursuant to the provisions of this section.

9. A local government, special district or enterprise district may use the estimate provided by the executive director pursuant to subsection 8 in the preparation of its budget.

Sec. 12. *The executive director shall ensure that each local government, special district or enterprise district that:*

1. Received, before July 1, 1998, any portion of the proceeds of a tax which is included in the fund; and

2. Pledged a portion of the money described in subsection 1 to secure the payment of bonds or other types of obligations,

receives an amount at least equal to that amount which the local government, special district or enterprise district would have received before July 1, 1998, that is pledged to secure the payment of those bonds or other types of obligations.

Sec. 13. *1. An enterprise district shall not pledge any portion of the revenues from any of the taxes included in the fund to secure the payment of bonds or other obligations.*

2. The executive director shall ensure that a governmental entity created between July 1, 1996, and July 1, 1998, does not receive money from the taxes included in the fund unless that governmental entity provides police protection and at least two of the following services:

(a) Fire protection;

(b) Construction, maintenance and repair of roads; or

(c) Parks and recreation.

3. As used in this section:

(a) "Fire protection" has the meaning ascribed to it in section 15 of this act.

(b) "Parks and recreation" has the meaning ascribed to it in section 15 of this act.

(c) "Police protection" has the meaning ascribed to it in section 15 of this act.

(d) "Construction, maintenance and repair of roads" has the meaning ascribed to it in section 15 of this act.

Sec. 14. *1. The governing bodies of two or more local governments or special districts, or any combination thereof, may, pursuant to the provisions of NRS 277.045, enter into a cooperative agreement that sets forth an alternative formula for the distribution of the taxes included in the fund to the local governments or special districts which are parties to the agreement. The governing bodies of each local government or special district that is a party to the agreement must approve the alternative formula by majority vote.*

2. The county clerk of a county in which a local government or special district that is a party to a cooperative agreement pursuant to subsection 1 is located shall transmit a copy of the cooperative agreement to the executive director:

(a) Within 10 days after the agreement is approved by each of the governing bodies of the local governments or special districts that are parties to the agreement; and

(b) Not later than December 31 of the year immediately preceding the initial year of distribution that will be governed by the cooperative agreement.

3. The governing body of a local government or special district shall not enter into more than one cooperative agreement pursuant to subsection 1.

4. If at least two cooperative agreements exist among the local governments and special districts that are located in the same county, the executive director shall ensure that the terms of those cooperative agreements do not conflict.

5. Any local government or special district that is not a party to a cooperative agreement pursuant to subsection 1 must continue to receive money from the fund pursuant to the provisions of sections 10 and 11 of this act.

6. The governing bodies of the local governments and special districts that have entered into a cooperative agreement pursuant to subsection 1 may, by majority vote, amend the terms of the agreement. The governing bodies shall not amend the terms of a cooperative agreement more than once during the first 2 years after the cooperative agreement is effective and once

every year thereafter, unless the committee on local government finance approves the amendment. The provisions of this subsection do not apply to any interlocal agreements for the consolidation of governmental services entered into by local governments or special districts pursuant to the provisions of NRS 277.080 to 277.180, inclusive, that do not relate to the distribution of taxes included in the fund.

7. A cooperative agreement executed pursuant to this section may not be terminated unless the governing body of each local government or special district that is a party to a cooperative agreement pursuant to subsection 1 agrees by unanimous consent to terminate the agreement.

8. For each fiscal year the cooperative agreement is in effect, the executive director shall continue to calculate the amount each local government or special district that is a party to a cooperative agreement pursuant to subsection 1 would receive pursuant to the provisions of sections 10 and 11 of this act.

9. If the governing bodies of the local governments or special districts that are parties to a cooperative agreement terminate the agreement pursuant to subsection 7, the executive director must distribute to those local governments or special districts an amount equal to the amount the local government or special district would have received pursuant to the provisions of sections 10 and 11 of this act according to the calculations performed pursuant to subsection 8.

Sec. 15. *1. The governing body of a local government or special district that is created after July 1, 1998, and which provides police protection and at least two of the following services:*

(a) Fire protection;

(b) Construction, maintenance and repair of roads; or

(c) Parks and recreation,

may, by majority vote, request the Nevada tax commission to direct the executive director to allocate money from the fund to the local government or special district pursuant to the provisions of sections 10 and 11 of this act.

2. On or before December 31 of the year immediately preceding the first fiscal year that the local government or special district would receive money from the fund, a governing body that submits a request pursuant to subsection 1 must:

(a) Submit the request to the executive director; and

(b) Provide copies of the request and any information it submits to the executive director in support of the request to each local government and special district that:

(1) Receives money from the fund; and

(2) Is located within the same county.

3. The executive director shall review each request submitted pursuant to subsection 1 and submit his findings to the committee on local government finance. In reviewing the request, the executive director shall:

(a) For the initial year of distribution, establish an amount to be allocated to the new local government or special district pursuant to the provisions of sections 10 and 11 of this act. If the new local government or special district will provide a service that was provided by another local government or special district before the creation of the new local government or special district, the amount allocated to the local government or special district which previously provided the service must be decreased by the amount allocated to the new local government or special district; and

(b) Consider:

(1) The effect of the distribution of money in the fund, pursuant to the provisions of sections 10 and 11 of this act, to the new local government or special district on the amounts that the other local governments and special districts that are located in the same county will receive from the fund; and

(2) The comparison of the amount established to be allocated pursuant to the provisions of sections 10 and 11 of this act for the new local government or special district to the amounts allocated to the other local governments and special districts that are located in the same county.

4. The committee on local government finance shall review the findings submitted by the executive director pursuant to subsection 3. If the committee determines that the distribution of money in the fund to the new local government or special district is appropriate, it shall submit a recommendation to the Nevada tax commission. If the committee determines that the distribution is not appropriate, that decision is not subject to review by the Nevada tax commission.

5. The Nevada tax commission shall schedule a public hearing within 30 days after the committee on local government finance submits its recommendation. The Nevada tax commission shall provide public notice of the hearing at least 10 days before the date on which the hearing will be held. The executive director shall provide copies of all documents relevant to the recommendation of the committee on local government finance to the governing body of each local government and special district that is located in the same county as the new local government or special district.

6. If, after the public hearing, the Nevada tax commission determines that the recommendation of the committee on local government finance is appropriate, it shall order the executive director to distribute money in the fund to the new local government or special district pursuant to the provisions of sections 10 and 11 of this act.

7. For the purposes of this section, the local government or special district may enter into an interlocal agreement with another governmental entity for the provision of the services set forth in subsection 1 if that local government or special district compensates the governmental entity that provides the services in an amount equal to the value of those services.

8. As used in this section:

(a) "Fire protection" includes the provision of services related to:

(1) The prevention and suppression of fire; and

(2) Rescue,

and the acquisition and maintenance of the equipment necessary to provide those services.

(b) "Parks and recreation" includes the employment by the local government or special district, on a permanent and full-time basis, of persons who administer and maintain recreational facilities and parks. "Parks and recreation" does not include the construction or maintenance of roadside parks or rest areas that are constructed or maintained by the local government or special district as part of the construction, maintenance and repair of roads.

(c) "Police protection" includes the employment by the local government or special district, on a permanent and full-time basis, of at least three persons whose primary functions specifically include:

(1) Routine patrol;

(2) Criminal investigations;

(3) Enforcement of traffic laws; and

(4) Investigation of motor vehicle accidents.

(d) "Construction, maintenance and repair of roads" includes the acquisition, operation or use of any material, equipment or facility that is used exclusively for the construction, maintenance or repair of a road and that is necessary for the safe and efficient use of the road except alleys and pathways for bicycles that are separate from the roadway and, including, without limitation:

(1) Grades or regrades;

(2) Gravel;

(3) Oiling;

(4) Surfacing;

(5) Macadamizing;

(6) Paving;

(7) Cleaning;

(8) Sanding or snow removal;

(9) Crosswalks;

(10) Sidewalks;

(11) Culverts;

(12) Catch basins;

(13) Drains;

(14) Sewers;

(15) Manholes;

(16) Inlets;

(17) Outlets;

(18) Retaining walls;

(19) Bridges;

(20) Overpasses;

(21) Tunnels;
(22) Underpasses;
(23) Approaches;
(24) Sprinkling facilities;
(25) Artificial lights and lighting equipment;
(26) Parkways;
(27) Fences or barriers that control access to the road;
(28) Control of vegetation;
(29) Rights of way;
(30) Grade separators;
(31) Traffic separators;
(32) Devices and signs for control of traffic;
(33) Facilities for personnel who construct, maintain or repair roads; and
(34) Facilities for the storage of equipment or materials used to construct, maintain or repair roads.

Sec. 16. NRS 360.283 is hereby amended to read as follows:

360.283 1. The department shall adopt regulations to establish a method of determining annually the population of each *town,* township, city and county in this state and estimate the population of each *town,* township, city and county pursuant to those regulations.

2. The department shall issue an annual report of the estimated population of each *town,* township, city and county in this state.

3. Any *town,* city or county in this state may petition the department to revise the estimated population of that *town,* city or county. No such petition may be filed on behalf of a township. The department shall by regulation establish a procedure to review each petition and to appeal the decision on review.

4. The department shall, upon the completion of any review and appeal thereon pursuant to subsection 3, determine the population of each *town,* township, city and county in this state, and submit its determination to the governor.

5. The department shall employ a demographer to assist in the determination of population pursuant to this section and to cooperate with the Federal Government in the conduct of each decennial census as it relates to this state.

Sec. 17. NRS 369.173 is hereby amended to read as follows:

369.173 The department shall apportion , [and the state controller shall distribute,] on a monthly basis, from the tax on liquor containing more than 22 percent of alcohol by volume, the portion of the tax collected during the preceding month which is equivalent to 50 cents per wine gallon, among Carson City and the counties of this state in proportion to their respective populations. [The department shall apportion that money within the counties as follows:

1. If there are no incorporated cities within the county, the entire amount must go into the county treasury.

2. If there is one incorporated city within the county the money must be apportioned between the city and the county on the basis of the population of the city and the population of the county excluding the population of the city.

3. If there are two or more incorporated cities within the county, the entire amount must be apportioned among the cities in proportion to their respective populations.

4. In Carson City the entire amount must go into the city treasury.] *The state controller shall deposit the amounts apportioned to Carson City and each county in the local government tax distribution fund created by section 8 of this act for credit to the respective accounts of Carson City and each county.*

Sec. 18. NRS 370.260 is hereby amended to read as follows:

370.260 1. All taxes and license fees imposed by the provisions of NRS 370.001 to 370.430, inclusive, less any refunds granted as provided by law, must be paid to the department in the form of remittances payable to the department.

2. The department shall:

(a) As compensation to the state for the costs of collecting the taxes and license fees, transmit each month the sum the legislature specifies from the remittances made to it pursuant to subsection 1 during the preceding month to the state treasurer for deposit to the credit of the department. The deposited money must be expended by the department in accordance with its work program.

(b) From the remittances made to it pursuant to subsection 1 during the preceding month, less the amount transmitted pursuant to paragraph (a), transmit each month the portion of the tax which is equivalent to 12.5 mills per cigarette to the state treasurer for deposit to the credit of the account for the tax on cigarettes in the state general fund.

(c) Transmit the balance of the payments each month to the state treasurer for deposit [to the credit of the cigarette tax account in the intergovernmental fund.] *in the local government tax distribution fund created by section 8 of this act.*

(d) Report to the state controller monthly the amount of collections.

3. The money [in the cigarette tax account] *deposited pursuant to paragraph (c) of subsection 2 in the local government tax distribution fund* is hereby appropriated to Carson City and to each of the counties in proportion to their respective populations [. The amount in the account which was collected during the preceding month must be apportioned by the department and distributed by the state controller as follows:

(a) In a county whose population is 6,000 or more:

(1) If there are no incorporated cities within the county, the entire amount must go into the county treasury.

(2) If there is one incorporated city within the county the money must be apportioned between the city and the county on the basis of the population of the city and the population of the county excluding the population of the city.

(3) If there are two or more incorporated cities within the county, the entire amount must be apportioned among the cities in proportion to their respective populations.

(b) In a county whose population is less than 6,000:

(1) If there are no incorporated cities or unincorporated towns within the county, the entire amount must go into the county treasury.

(2) If there is one incorporated city or one unincorporated town within the county the money must be apportioned between the city or town and the county on the basis of the population of the city or town and the population of the county excluding the population of the city or town.

(3) If there are two or more incorporated cities or unincorporated towns or an incorporated city and an unincorporated town within the county, the entire amount must be apportioned among the cities or towns in proportion to their respective populations.

(c) In Carson City the entire amount must go into the city treasury.

4. For the purposes of this section, "unincorporated town" means only those towns governed by town boards organized pursuant to NRS 269.016 to 269.019, inclusive.] *and must be credited to the respective accounts of Carson City and each county.*

Sec. 19. NRS 375.070 is hereby amended to read as follows:

375.070 [1.] The county recorder shall transmit the proceeds of the real property transfer tax at the end of each quarter in the following manner:

[(a)] *1.* An amount equal to that portion of the proceeds which is equivalent to 10 cents for each $500 of value or fraction thereof must be transmitted to the state treasurer who shall deposit that amount in the account for low-income housing created pursuant to NRS 319.500.

[(b)] *2.* The remaining proceeds must be transmitted to the [county treasurer, who shall in Carson City, and in any county where there are no incorporated cities, deposit them all in the general fund, and in other counties deposit 25 percent of them in the general fund and apportion the remainder as follows:

(1) If there is one incorporated city in the county, between that city and the county general fund in proportion to the respective populations of the city and the unincorporated area of the county.

(2) If there are two or more cities in the county, among the cities in proportion to their respective populations.

2. If there is any incorporated city in a county, the county recorder shall charge each city a fee equal to 2 percent of the real property transfer tax which is transferred to that city.] *state treasurer for deposit in the local government tax distribution fund created by section 8 of this act for credit to the respective accounts of Carson City and each county.*

Sec. 20. NRS 377.055 is hereby amended to read as follows:

377.055 1. The department [,] shall monthly determine for each county an amount of money equal to the sum of:

(a) Any fees and any taxes, interest and penalties which derive from the basic city-county relief tax collected in that county pursuant to this chapter during the preceding month, less the corresponding amount transferred to the state general fund pursuant to subsection 3 of NRS 377.050; and

(b) That proportion of the total amount of taxes which derive from that portion of the tax levied at the rate of one-half of 1 percent collected pursuant to this chapter during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state, less the corresponding amount transferred to the state general fund pursuant to subsection 3 of NRS 377.050, which the population of that county bears to the total population of all counties which have in effect a city-county relief tax ordinance [.

2. The department shall apportion and the state controller shall remit the amount determined for each county in the following manner:

(a) If there is one incorporated city in the county, apportion the money between the city and the county general fund in proportion to the respective populations of the city and the unincorporated area of the county.

(b) If there are two or more cities in the county, apportion all such money among the cities in proportion to their respective populations.

(c) If there are no incorporated cities in the county, remit the entire amount to the county treasurer for deposit in the county general fund.

3. The provisions of subsection 2 do not apply to Carson City, where the treasurer shall deposit the entire amount determined for the city and received from the state controller in the general fund.

4.],

and deposit the money in the local government tax distribution fund created by section 8 of this act for credit to the respective accounts of each county.

2. For the purpose of the distribution required by this section, the occasional sale of a vehicle shall be deemed to take place in the county to which the privilege tax payable by the buyer upon that vehicle is distributed.

Sec. 21. NRS 377.057 is hereby amended to read as follows:

377.057 1. The state controller, acting upon the relevant information furnished by the department, shall monthly from the fees, taxes, interest and penalties which derive from the supplemental city-county relief tax collected in all counties and from out-of-state businesses during the preceding month, except as otherwise provided in subsection 2:

(a) For Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey and White Pine counties, distribute to each county an

amount equal to one-twelfth of the amount distributed in the immediately preceding fiscal year multiplied by one plus:

(1) The percentage change in the total receipts from the supplemental city-county relief tax for all counties and from out-of-state businesses, from the fiscal year 2 years preceding the immediately preceding fiscal year to the fiscal year preceding the immediately preceding fiscal year; or

(2) Except as otherwise provided in this paragraph, the percentage change in the population of the county, as certified by the governor pursuant to NRS 360.285, added to the percentage change in the Consumer Price Index for the year ending on December 31 next preceding the year of distribution,

whichever is less, except that the amount distributed to the county must not be less than the amount specified in subsection [10.] *6.* If the [United States] Bureau of the Census *of the United States Department of Commerce* issues population totals that conflict with the totals certified by the governor pursuant to NRS 360.285, the percentage change calculated pursuant to subparagraph (2) for the ensuing fiscal year must be an estimate of the change in population for the calendar year, based upon the population totals issued by the Bureau of the Census.

(b) For all other counties, distribute the amount remaining after making the distributions required by paragraph (a) to each county in the proportion that the amount of supplemental city-county relief tax collected in the county for the month bears to the total amount of supplemental city-county relief tax collected for that month in the counties whose distribution will be determined pursuant to this paragraph.

2. If the amount of supplemental city-county relief tax collected in a county listed in paragraph (a) of subsection 1 for the 12 most recent months for which information concerning the actual amount collected is available on February 15 of any year exceeds by more than 10 percent the amount distributed pursuant to paragraph (a) to that county for the same period, the state controller shall distribute that county's portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (b) in all subsequent fiscal years, unless a waiver is granted pursuant to subsection 3.

3. A county which, pursuant to subsection 2, is required to have its portion of the proceeds from the supplemental city-county relief tax distributed pursuant to paragraph (b) of subsection 1, may file a request with the Nevada tax commission for a waiver of the requirements of subsection 2. The request must be filed on or before February 20 next preceding the fiscal year for which the county will first receive its portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (b) of subsection 1, and must be accompanied by evidence which supports the granting of the waiver. The commission shall grant or deny a request for a waiver on or before March 10 next following the timely filing of the request. If the commission determines that the increase in the amount of

supplemental city-county relief tax collected in the county was primarily caused by:

(a) Nonrecurring taxable sales, it shall grant the request.

(b) Normal or sustainable growth in taxable sales, it shall deny the request.

A county which is granted a waiver pursuant to this subsection is not required to obtain a waiver in any subsequent fiscal year to continue to receive its portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (a) of subsection 1 unless the amount of supplemental city-county relief tax collected in the county in a fiscal year again exceeds the threshold established in subsection 2.

4. The amount apportioned to each county must [then be apportioned among the several local governments therein, including the county and excluding the school district, any district created to provide a telephone number for emergencies, any district created under chapter 318 of NRS to furnish emergency medical services, any redevelopment agency, any tax increment area and any other local government excluded by specific statute, in the proportion which each local government's basic ad valorem revenue bears to the total basic ad valorem revenue of all these local governments.

5. As used in this section, the "basic ad valorem revenue" of each local government, except as otherwise provided in subsection 6 of NRS 354.5987, is its assessed valuation, including assessed valuation attributable to a redevelopment agency or tax increment area but excluding the portion attributable to the net proceeds of minerals, for the year of distribution, multiplied by the rate levied on its behalf for the fiscal year ending June 30, 1981, for purposes other than paying the interest on and principal of its general obligations. For the purposes of this subsection:

(a) A county whose actual tax rate, for purposes other than debt service, for the fiscal year ending on June 30, 1981, was less than 50 cents per $100 of assessed valuation is entitled to the use of a rate not greater than 80 cents per $100 of assessed valuation.

(b) A fire district in such a county whose tax rate was more than 50 cents per $100 of assessed valuation is entitled to the use of a rate not greater than $1.10 per $100 of assessed valuation.

6. For the purposes of determining basic ad valorem revenue, the assessed valuation of a fire protection district includes property which was transferred from private ownership to public ownership after July 1, 1986, pursuant to:

(a) The Santini-Burton Act, Public Law 96-586; or

(b) Chapter 585, Statutes of Nevada 1985, at page 1866, approved by the voters on November 4, 1986.

7. On or before February 15 of each year, the executive director shall provide to each local government a preliminary estimate of the revenue it

will receive from the supplemental city-county relief tax in the next fiscal year.

8. On or before March 15 of each year, the executive director shall:

(a) Make an estimate of the receipts from the supplemental city-county relief tax on an accrual basis for the next fiscal year in accordance with generally accepted accounting principles; and

(b) Provide to each local government an estimate of the tax that local government would receive based upon the estimate made pursuant to paragraph (a) and calculated pursuant to the provisions of this section.

9. A local government may use the estimate provided by the executive director pursuant to subsection 8 in the preparation of its budget.

10.] *be deposited in the local government tax distribution fund created by section 8 of this act for credit to the respective accounts of each county.*

5. The minimum amount which may be distributed to the following counties in a month pursuant to paragraph (a) of subsection 1 is as follows:

Douglas	$580,993
Esmeralda	53,093
Lander	155,106
Lincoln	72,973
Lyon	356,858
Mineral	118,299
Nye	296,609
Pershing	96,731
Storey	69,914
White Pine	158,863

[11.] *6.* As used in this section, unless the context otherwise requires:

(a) ["Local government" includes a fire protection district organized pursuant to chapter 473 of NRS.] *"Enterprise district" has the meaning ascribed to it in section 4 of this act.*

(b) "Local government" [does not include the Nevada rural housing authority.] *has the meaning ascribed to it in section 6 of this act.*

(c) "Special district" has the meaning ascribed to it in section 7 of this act.

Sec. 22. Chapter 354 of NRS is hereby amended by adding thereto sections 23 and 24 of this act.

Sec. 23. *Except as otherwise provided in section 24 of this act, if one or more local governments assume the functions previously performed by a local government that no longer exists, the Nevada tax commission shall add to the allowed revenue from taxes ad valorem otherwise allowable to the local government or local governments pursuant to NRS 354.59811 an amount equal to the allowed revenue from taxes ad valorem for the last fiscal year of existence of the local government whose functions were assumed. If*

more than one local government assumes the functions, the additional revenue must be divided among the local governments on the basis of the proportionate costs of the functions assumed. The Nevada tax commission shall not allow any increase in the allowed revenue from taxes ad valorem if the increase would result in a decrease in revenue of any local government in the county that does not assume those functions.

Sec. 24. *1. For the purpose of calculating the amount to be distributed pursuant to the provisions of sections 10 and 11 of this act from a county's account in the local government tax distribution fund to a local government, special district or enterprise district after it assumes the functions of another local government, special district or enterprise district:*

(a) Except as otherwise provided in this subsection and subsection 2, the executive director of the department of taxation shall:

(1) Add the amounts calculated pursuant to subsection 1 or 2 of section 10 of this act for each local government, special district or enterprise district and allocate the combined amount to the local government, special district or enterprise district that assumes the functions; and

(2) If applicable, add the population and average change in the assessed valuation of taxable property that would otherwise be allowed to the local government or special district whose functions are assumed, except any assessed valuation attributable to the net proceeds of minerals, pursuant to subsection 3 of section 11 of this act to the population and average change in assessed valuation for the local government, special district or enterprise district that assumes the functions.

(b) If two or more local governments, special districts or enterprise districts assume the functions of another local government, special district or enterprise district, the additional revenue must be divided among the local governments, special districts or enterprise districts that assume the functions on the basis of the proportionate costs of the functions assumed. The Nevada tax commission shall not allow any increase in the allowed revenue from the taxes contained in the county's account in the local government tax distribution fund if the increase would result in a decrease in revenue of any local government, special district or enterprise district in the county that does not assume those functions. If more than one local government, special district or enterprise district assumes the functions, the Nevada tax commission shall determine the appropriate amounts calculated pursuant to subparagraphs (1) and (2) of paragraph (a).

2. If a city disincorporates, the board of county commissioners of the county in which the city is located must determine the amount the unincorporated town created by the disincorporation will receive pursuant to the provisions of sections 2 to 15, inclusive, of this act.

3. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in section 4 of this act.

(b) "Local government" has the meaning ascribed to it in section 6 of this act.

(c) "Special district" has the meaning ascribed to it in section 7 of this act.

Sec. 25. NRS 354.470 is hereby amended to read as follows:

354.470 NRS 354.470 to 354.626, inclusive, *and sections 23 and 24 of this act* may be cited as the Local Government Budget Act.

Sec. 26. NRS 354.59813 is hereby amended to read as follows:

354.59813 1. In addition to the allowed revenue from taxes ad valorem determined pursuant to NRS 354.59811, [when] *if* the estimate of the revenue available from the supplemental city-county relief tax *to the county* as determined by the executive director of the department of taxation pursuant to the provisions of [NRS 377.057] *subsection 8 of section 11 of this act* is less than the amount of money that would be generated by applying a tax rate of $1.15 per $100 of assessed valuation to the assessed valuation of the [state,] *county*, the governing body of each local government may levy an additional tax ad valorem for operating purposes. The total tax levied *by the governing body of a local government* pursuant to this section must not exceed a rate calculated to produce revenue equal to the difference between the [amount] *:*

(a) Amount of revenue from supplemental city-county relief tax estimated to be received by [that local government and] the *county pursuant to subsection 8 of section 11 of this act; and*

(b) The tax that [it] *the county* would have been estimated to receive if the estimate for the total revenue available from the tax was equal to the amount of money that would be generated by applying a tax rate of $1.15 per $100 of assessed valuation to the assessed valuation of the [state.] *county, multiplied by the proportion determined for the local government pursuant to subparagraph (2) of paragraph (a) of subsection 3 of section 11 of this act.*

2. Any additional taxes ad valorem levied as a result of the application of this section must not be included in the base from which the allowed revenue from taxes ad valorem for the next subsequent year is computed.

3. As used in this section, "local government" has the meaning ascribed to it in section 6 of this act.

Sec. 27. NRS 354.5982 is hereby amended to read as follows:

354.5982 1. The local government may exceed the limit imposed by NRS 354.59811 upon the calculated receipts from taxes ad valorem only if its governing body proposes to its registered voters an additional levy ad valorem, specifying the amount of money to be derived, the purpose for which it is to be expended and the duration of the levy, and the proposal is approved by a majority of the voters voting on the question at a primary or general election or a special election called for that purpose. The duration of the levy must not exceed 30 years. The governing body may discontinue the

levy before it expires and may not thereafter reimpose it in whole or in part without following the procedure required for its original imposition.

2. A special election may be held only if the governing body of the local government determines, by a unanimous vote, that an emergency exists. The determination made by the governing body is conclusive unless it is shown that the governing body acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the governing body must be commenced within 15 days after the governing body's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the governing body of the local government to prevent or mitigate a substantial financial loss to the local government or to enable the governing body to provide an essential service to the residents of the local government.

3. To the allowed revenue from taxes ad valorem determined pursuant to NRS 354.59811 for a local government, the executive director of the department of taxation shall add any amount approved by the legislature for the cost to that local government of any substantial program or expense required by legislative enactment.

[4. Except as otherwise provided in this subsection, if one or more local governments take over the functions previously performed by a local government which no longer exists, the Nevada tax commission shall add to the allowed revenue from taxes ad valorem and the basic ad valorem revenue, respectively, otherwise allowable to the local government or local governments pursuant to NRS 354.59811 and 377.057, an amount equal to the allowed revenue from taxes ad valorem and the basic ad valorem revenue, respectively, for the last fiscal year of existence of the local government whose functions were assumed. If more than one local government assumes the functions, the additional revenue must be divided among the local governments on the basis of the proportionate costs of the functions assumed. The Nevada tax commission shall not allow any increase in the allowed revenue from taxes ad valorem or basic ad valorem revenue if the increase would result in a decrease in revenue of any local government in the county which does not assume those functions.]

Sec. 28. NRS 354.5987 is hereby amended to read as follows:

354.5987 1. For the purposes of NRS 354.59811 , [and 377.057,] the allowed revenue from taxes ad valorem [and the basic ad valorem revenue] of any local government:

(a) Which comes into being on or after July 1, 1989, whether newly created, consolidated, or both;

[(b) Which was in existence before July 1, 1989, but for which the basic ad valorem revenue was not established for the fiscal year ending June 30, 1989; or

(c)] *or*

(b) Which was in existence before July 1, 1989, but did not receive revenue from taxes ad valorem, except any levied for debt service, for the fiscal year ending June 30, 1989,

must be initially established by the Nevada tax commission.

2. Except as otherwise provided in subsections 3 and [8,] *6,* if the local government for which the allowed revenue from taxes ad valorem [and the basic ad valorem revenue are] *is* to be established performs a function previously performed by another local government, the total revenue allowed to all local governments for performance of substantially the same function in substantially the same geographical area must not be increased. To achieve this result, the Nevada tax commission shall request the committee on local government finance to prepare a statement of the prior cost of performing the function for each predecessor local government. Within 60 days after receipt of such a request, the committee on local government finance shall prepare a statement pursuant to the request and transmit it to the Nevada tax commission. The Nevada tax commission may accept, reject or amend the statement of the committee on local government finance. The decision of the Nevada tax commission is final. Upon making a final determination of the prior cost of performing the function for each predecessor local government, the Nevada tax commission shall:

(a) Determine the percentage that the prior cost of performing the function for each predecessor local government is of [the basic ad valorem revenue and of] the allowed revenue from taxes ad valorem of that local government; and

(b) Apply the [percentages] *percentage* determined pursuant to paragraph (a) to the [basic ad valorem revenue and to the] allowed revenue from taxes ad valorem [, respectively,] and subtract [those amounts respectively from the basic ad valorem revenue and] *that amount* from the allowed revenue from taxes ad valorem of the predecessor local government.

The [basic ad valorem revenue and] allowed revenue from taxes ad valorem [, respectively,] attributable to the new local government for the cost of performing the function must equal the total of the amounts subtracted for the prior cost of performing the function from the [basic ad valorem revenue and] allowed revenue from taxes ad valorem [, respectively,] of all of the predecessor local governments.

3. [If the local government for which the basic ad valorem revenue is to be established pursuant to subsection 1 is a city, the Nevada tax commission shall:

(a) Using the basic ad valorem revenue of the town replaced by the city, if any, as a basis, set the basic ad valorem revenue of the city at an amount sufficient to allow the city, with other available revenue, to provide the basic services for which it was created;

(b) Reduce the basic ad valorem revenue of the county by the amount set for the city pursuant to paragraph (a);

(c) Add to the basic ad valorem revenue of the county the basic ad valorem revenue of any town which the city has replaced; and

(d) Add to the allowed revenue from taxes ad valorem of the county the allowed revenue from taxes ad valorem for any town which the city replaced.

4.] If the local government for which the allowed revenue from taxes ad valorem [or the basic ad valorem revenue] is to be established is an unincorporated town which provides a service not previously provided by another local government, and the board of county commissioners has included the unincorporated town in a resolution adopted pursuant to the provisions of NRS 269.5755, the Nevada tax commission shall [:

(a) Establish the basic ad valorem revenue of the town at an amount which is in the same ratio to the assessed valuation of the town as the combined basic ad valorem revenues are to the combined assessed valuations of all other unincorporated towns included in the common levy authorized pursuant to NRS 269.5755; and

(b) If] , *if* the unincorporated town [also] does not receive revenue from taxes ad valorem, establish the allowed revenue of the town from taxes ad valorem at an amount which is in the same ratio to the assessed valuation of the town as the combined allowed revenues from taxes ad valorem are to the combined assessed valuations of the other unincorporated towns included in the common levy.

[5. The basic ad valorem revenue and]

4. The allowed revenue from taxes ad valorem of an unincorporated town which provides a service not previously provided by another local government must be:

(a) Reduced by 75 percent for the first fiscal year following the fiscal year in which the [basic ad valorem revenue and] allowed revenue from taxes ad valorem [are] *is* established pursuant to subsection [4;] *3;*

(b) Reduced by 50 percent for the second fiscal year following the fiscal year in which the [basic ad valorem revenue and] allowed revenue from taxes ad valorem [are] *is* established pursuant to subsection [4;] *3;* and

(c) Reduced by 25 percent for the third fiscal year following the fiscal year in which the [basic ad valorem revenue and] allowed revenue from taxes ad valorem [are] *is* established pursuant to subsection [4.

6.] *3.*

5. In any other case, except as otherwise provided in subsection [8,] *6,* the allowed revenue from taxes ad valorem of all local governments in the county, determined pursuant to NRS 354.59811, must not be increased, but the total [basic ad valorem revenue and] allowed revenue from taxes ad valorem must be reallocated among the local governments consistent with subsection 2 to accommodate the amount established for the new local government pursuant to subsection 1.

[7. Any amount of basic ad valorem revenue allowable which is established or changed pursuant to this section must be used to determine a new tax rate for the fiscal year ending June 30, 1981, for each affected local government. This new tax rate must be used to make the distributions among the local governments in the county required by NRS 377.057 for each year following the year in which the amount was established or changed.

8.] *6.* In establishing the allowed revenue from taxes ad valorem of a county, city or town pursuant to this section, the Nevada tax commission shall allow a tax rate for operating expenses of at least 15 cents per $100 of assessed valuation in addition to the tax rate allowed for any identified and restricted purposes and for debt service.

[9.] *7.* As used in this section:

(a) "Predecessor local government" means a local government which previously performed all or part of a function to be performed by the local government for which the allowed revenue from taxes ad valorem [and the basic ad valorem revenue are] *is* being established pursuant to subsection 1.

(b) "Prior cost of performing the function" means the amount expended by a local government to perform a function which is now to be performed by another local government. The amount must be determined on the basis of the most recent fiscal year for which reliable information is available.

Sec. 29. NRS 354.59874 is hereby amended to read as follows:

354.59874 Except as otherwise provided in [subsection 4 of NRS 354.5982] *sections 23 and 24 of this act* and subsection 2 of NRS 354.5987, if one local government takes over a function or provides a service previously performed by another local government pursuant to an agreement between the local governments, upon petition by the participating local governments, the executive director of the department of taxation shall:

1. Reduce the allowed revenue from taxes ad valorem calculated pursuant to NRS 354.59811 of the local government which previously performed the function or provided the service, for the first year the service is provided or the function is performed by an amount equal to the cost of performing the function or providing the service; and

2. Increase the allowed revenue from taxes ad valorem calculated pursuant to NRS 354.59811 of the local government which assumed the performance of the function or the provision of the service, for the first year the service is provided or the function is performed by an amount equal to the amount by which the reduction was made pursuant to subsection 1.

Sec. 30. NRS 408.235 is hereby amended to read as follows:

408.235 1. There is hereby created the state highway fund.

2. Except as otherwise provided in subsection [6] *7* of NRS 482.180, the proceeds from the imposition of any license or registration fee and other charges with respect to the operation of any motor vehicle upon any public highway, city, town or county road, street, alley or highway in this state and the proceeds from the imposition of any excise tax on gasoline or other

motor vehicle fuel must be deposited in the state highway fund and must, except for costs of administering the collection thereof, be used exclusively for administration, construction, reconstruction, improvement and maintenance of highways as provided for in this chapter.

3. The interest and income earned on the money in the state highway fund, after deducting any applicable charges, must be credited to the fund.

4. Costs of administration for the collection of the proceeds for any license or registration fees and other charges with respect to the operation of any motor vehicle must be limited to a sum not to exceed 22 percent of the total proceeds so collected.

5. Costs of administration for the collection of any excise tax on gasoline or other motor vehicle fuel must be limited to a sum not to exceed 1 percent of the total proceeds so collected.

6. All bills and charges against the state highway fund for administration, construction, reconstruction, improvement and maintenance of highways under the provisions of this chapter must be certified by the director and must be presented to and examined by the state board of examiners. When allowed by the state board of examiners and upon being audited by the state controller, the state controller shall draw his warrant therefor upon the state treasurer.

Sec. 31. NRS 482.180 is hereby amended to read as follows:

482.180 1. The motor vehicle fund is hereby created as an agency fund. Except as otherwise provided *in subsection 4 or* by a specific statute, all money received or collected by the department must be deposited in the state treasury for credit to the motor vehicle fund.

2. The interest and income on the money in the motor vehicle fund, after deducting any applicable charges, must be credited to the state highway fund.

3. Any check accepted by the department in payment of vehicle privilege tax or any other fee required to be collected under this chapter must, if it is dishonored upon presentation for payment, be charged back against the motor vehicle fund or the county to which the payment was credited, in the proper proportion.

4. All money received or collected by the department for the basic vehicle privilege tax must be deposited in the local government tax distribution fund, created by section 8 of this act, for credit to the appropriate county pursuant to subsection 6.

5. Money for the administration of the provisions of this chapter must be provided by direct legislative appropriation from the state highway fund, upon the presentation of budgets in the manner required by law. Out of the appropriation the department shall pay every item of expense.

[5.] *6.* The privilege tax collected on vehicles subject to the provisions of chapter 706 of NRS and engaged in interstate or intercounty operation must be distributed among the counties in the following percentages:

Carson City	1.07 percent	Lincoln	3.12 percent
Churchill	5.21 percent	Lyon	2.90 percent
Clark	22.54 percent	Mineral	2.40 percent
Douglas	2.52 percent	Nye	4.09 percent
Elko	13.31 percent	Pershing	7.00 percent
Esmeralda	2.52 percent	Storey	.19 percent
Eureka	3.10 percent	Washoe	12.24 percent
Humboldt	8.25 percent	White Pine	5.66 percent
Lander	3.88 percent		

The distributions must be allocated among local governments within the respective counties pursuant to the provisions of NRS 482.181.

[6.] *7.* As commission to the department for collecting the privilege tax on vehicles subject to the provisions of this chapter and chapter 706 of NRS, the department shall deduct and withhold 1 percent of the privilege tax collected by a county assessor and 6 percent of the other privilege tax collected.

[7.] *8.* When the requirements of this section and NRS 482.181 have been met, and when directed by the department, the state controller shall transfer monthly to the state highway fund any balance in the motor vehicle fund.

[8.] *9.* If a statute requires that any money in the motor vehicle fund be transferred to another fund or account, the department shall direct the controller to transfer the money in accordance with the statute.

Sec. 32. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 4, the department shall certify monthly to the state board of examiners the amount of the basic and supplemental privilege taxes collected for each county by the department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental privilege tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.045 and 371.047.

3. The distribution of the basic privilege tax within a county must be made to local governments, [as defined in NRS 354.474, except redevelopment agencies and tax increment areas,] *special districts and enterprise districts pursuant to the provisions of sections 10 and 11 of this act. The distribution of the basic privilege tax must be made to the county school district within the county before the distribution of the basic privilege tax pursuant to the provisions of sections 10 and 11 of this act and* in the same ratio as all property taxes were levied in the county in the previous fiscal year, but the State of Nevada is not entitled to share in that distribution . [and at least 5 percent of the basic privilege tax disbursed to a county must

be deposited for credit to the county's general fund.] For the purpose of [this subsection,] *calculating the amount of basic privilege tax to be distributed to the county school district,* the taxes levied by each local government , *special district and enterprise district* are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. An amount equal to any basic privilege tax distributed to a redevelopment agency or tax increment area in the fiscal year 1987-1988 must continue to be distributed to that agency or area as long as it exists but must not be increased.

5. [Local governments, other than incorporated cities, are entitled to receive no distribution of basic privilege tax if the distribution to the local government is less than $100. Any undistributed money accrues to the county general fund of the county in which the local government is located.

6.] The department shall make distributions of basic privilege tax directly to [counties,] county school districts . [and incorporated cities. Distributions for other local governments within a county must be paid to the counties for distribution to the other local governments.]

6. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in section 4 of this act.

(b) "Local government" has the meaning ascribed to it in section 6 of this act.

(c) "Special district" has the meaning ascribed to it in section 7 of this act.

Sec. 33. Section 10 of chapter 590, Statutes of Nevada 1995, at page 2187, is hereby amended to read as follows:

Sec. 10. [1.] This section and sections 1 to 7, inclusive, and 9 of this act become effective on July 1, 1995.

[2. Section 8 of this act becomes effective on July 1, 2000.]

Sec. 34. NRS 354.489 and section 8 of chapter 590, Statutes of Nevada 1995, at page 2183, are hereby repealed.

Sec. 35. 1. Notwithstanding the provisions of subsection 1 of section 10 of this act, the executive director of the department of taxation shall, for the initial year of distribution of the money contained in the local government tax distribution fund, allocate to each enterprise district an amount in lieu of the amount allocated pursuant to subsection 1 of section 10 of this act that is equal to the average annual amount that the enterprise

district received from the proceeds from each tax included in the fund for the fiscal years ending on June 30, 1996, and June 30, 1997.

2. Notwithstanding the provisions of subsection 2 of section 10 of this act, the executive director of the department of taxation shall, for the initial year of distribution of the money contained in the local government tax distribution fund, allocate to each local government and special district that receives, before July 1, 1998, any of the proceeds from a tax which is included in the local government tax distribution fund an amount in lieu of the amount allocated pursuant to the provisions of sections 10 and 11 of this act that is equal to an amount calculated by:

(a) Multiplying the average of the amount of each tax included in the fund that was distributed to the local government or special district for the fiscal years ending on June 30, 1996, and June 30, 1997, by one plus the average percentage change between the:

(1) Total amounts received by the local governments and special districts located in the same county for the fiscal year ending on June 30, 1997; and

(2) Average of the total amounts received by the local governments and special districts located in the same county for the fiscal years ending on June 30, 1996, and June 30, 1997; and

(b) Multiplying the amount calculated in paragraph (a) by one plus the average percentage change in the Consumer Price Index (All Items) for the period from July 1, 1997, to December 31, 1997.

3. For the purposes of this section, the fiscal year ending on June 30, 1999, is the initial year of distribution.

4. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in section 4 of this act.

(b) "Local government" has the meaning ascribed to it in section 6 of this act.

(c) "Special district" has the meaning ascribed to it in section 7 of this act.

Sec. 36. 1. The governing body of a local government or special district that receives, before July 1, 1998, any portion of the proceeds from a tax which is included in the local government tax distribution fund may submit a request to the executive director of the department of taxation for an adjustment to the amount calculated pursuant to section 35 of this act.

2. A governing body that submits a request pursuant to subsection 1 must:

(a) Submit the request to the executive director of the department of taxation; and

(b) Provide copies of the request and any information it submits to the executive director in support of the request to each of the other local governments and special districts that receive any portion of the proceeds

from a tax which is included in the local government tax distribution fund and which is located within the same county,

on or before December 31, 1997.

3. The executive director of the department of taxation shall review a request submitted pursuant to subsection 1 and submit his findings to the committee on local government finance. In reviewing the request, the executive director shall:

(a) Analyze the revenues available to the local government or special district in the fiscal year ending on June 30, 1981, including, without limitation:

(1) The rate of property taxes levied for the fiscal year ending on June 30, 1981;

(2) The change in the rate of property taxes for the 5 years immediately preceding the fiscal year ending on June 30, 1981; and

(3) The change in the assessed valuation of the taxable property within the local government or special district over the 5 years immediately preceding the fiscal year ending on June 30, 1981, but excluding any assessed valuation attributable to the net proceeds of minerals; and

(b) Consider:

(1) The effect of an increase in the amount calculated pursuant to the provisions of sections 10 and 11 of this act for the local government or special district on the amounts that the other local governments and special districts that are located within the same county will receive from the local government tax distribution fund;

(2) Any other factors that may have caused the local government or special district to experience growth or other effects which are not reflected in the formula for distribution for the supplemental city-county relief tax set forth in NRS 377.057 as that formula exists before July 1, 1998; and

(3) The comparison of the amount calculated pursuant to the provisions of sections 10 and 11 of this act for the local government or special district to the amounts calculated pursuant to provisions of sections 10 and 11 of this act for the other local governments and special districts that are located in the same county.

The executive director shall not base his findings solely on the fact that a local government or special district did not levy a rate of property tax equal in rate to those levied by other similar local governments or special districts for the fiscal year ending on June 30, 1981.

4. The committee on local government finance shall review the findings submitted by the executive director of the department of taxation pursuant to subsection 3. If the committee determines that the adjustment to the amount calculated pursuant to subsection 2 of section 10 of this act is appropriate, it shall submit a recommendation to the Nevada tax commission that sets forth the amount of the recommended adjustment. If the committee determines

that the adjustment is not appropriate, that decision is not subject to review by the Nevada tax commission.

5. The Nevada tax commission shall schedule a public hearing within 30 days after the committee on local government finance submits its recommendation. The Nevada tax commission shall provide public notice of the hearing at least 10 days before the date on which the hearing will be held. The executive director of the department of taxation shall provide copies of all documents relevant to the adjustment recommended by the committee on local government finance to the governing body of each local government and special district that is located in the same county as the local government or special district that requests the adjustment.

6. If, after the public hearing, the Nevada tax commission determines that the recommended adjustment is appropriate, it shall order the executive director of the department of taxation to adjust the amount calculated pursuant to the provisions of sections 10 and 11 of this act.

7. The executive director of the department of taxation, the committee on local government finance and the Nevada tax commission shall not consider any request for an adjustment to the amount calculated pursuant to the provisions of sections 10 and 11 of this act for a local government or special district that is submitted after December 31, 1997.

8. As used in this section:

(a) "Local government" has the meaning ascribed to it in section 6 of this act.

(b) "Special district" has the meaning ascribed to it in section 7 of this act.

Sec. 37. 1. On or before September 15, 1997, the executive director of the department of taxation shall calculate the amount each enterprise district will receive pursuant to subsection 1 of section 10 of this act.

2. As used in this section, "enterprise district" has the meaning ascribed to it in section 4 of this act.

Sec. 38. 1. This section and sections 1 to 7, inclusive, 12, 13 and 37 of this act become effective upon passage and approval.

2. Sections 8 to 11, inclusive, and 14 to 36, inclusive, of this act become effective on July 1, 1998.

TEXT OF REPEALED SECTIONS

354.489 "Basic ad valorem revenue" defined. "Basic ad valorem revenue" has the meaning ascribed to it in NRS 377.057.

Section 8 of chapter 590, Statutes of Nevada 1995:

Sec. 8. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection [4,] 5, the department shall certify monthly to the state board of examiners the amount of the basic and supplemental privilege taxes collected for each county by the department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental privilege tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.045.

3. The distribution of the basic privilege tax within a county must be made to local governments, as defined in NRS 354.474, except redevelopment agencies and tax increment areas, in the same ratio as all property taxes were levied in the county in the previous fiscal year, but the State of Nevada is not entitled to share in that distribution and at least 5 percent of the basic privilege tax disbursed to a county must be deposited for credit to the county's general fund. For the purpose of this subsection, the taxes levied by each local government are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. *The tax rate for the fiscal year beginning on July 1, 1980, of an unincorporated town created after July 1, 1980, for which the Nevada tax commission establishes the allowed revenue from taxes ad valorem or basic ad valorem revenue pursuant to subsection 4 of NRS 354.5987 shall be deemed to be the average tax rate levied for the fiscal year beginning on July 1, 1980, by other unincorporated towns included in the same common levy authorized by NRS 269.5755 which were in existence on July 1, 1980.*

5. An amount equal to any basic privilege tax distributed to a redevelopment agency or tax increment area in the fiscal year 1987-1988 must continue to be distributed to that agency or area as long as it exists but must not be increased.

[5.] 6. Local governments, other than incorporated cities, are entitled to receive no distribution of basic privilege tax if the distribution to the local government is less than $100. Any

* S B 2 5 4 *

undistributed money accrues to the county general fund of the county in which the local government is located.

[6.] 7. The department shall make distributions of basic privilege tax directly to counties, county school districts and incorporated cities. Distributions for other local governments within a county must be paid to the counties for distribution to the other local governments.

BDR No. 32-314
A.B.
S.B. 354

EXECUTIVE AGENCY FISCAL NOTE

STATE AGENCY'S ESTIMATES Date Prepared March 26, 1997

Agency Submitting: DEPARTMENT OF TAXATION

Items of Revenue or Expense or Both	Fiscal Year 1996-97	Fiscal Year 1997-98	Fiscal Year 1998-99	Continuing (Y/N)
Expenses				
Category 01 Personnel (salaries & benefits)		($ 70,259)	($ 79,705)	Y
Category 04 Operating (supplies, printing, phone)		(5,519)	(6,022)	Y
Category 05 Equipment (phone, calculator)		(751)	0	N
Category 21 Demographic Survey		(51,473)	(41,473)	Y
Category 26 Information Services (computer set-up)		(9,812)	0	N
Total		($ 137,814) (11 months)	($ 127,200)	

Explanation (Use additional sheets or attachments, as necessary)

See attachment

Detail of expenses are available upon request.

Signature [signature]
Title EXECUTIVE DIRECTOR

DEPARTMENT OF ADMINISTRATION'S COMMENTS Date April 1, 1997
The agency estimates are reasonable.

Signature [signature]
Title Director

FISCAL EFFECT ON LOCAL GOVERNMENT Date
(LCB Fiscal Division Use Only)

Signature
Title Deputy Fiscal Analyst

FN-1 (Revised 1/97)

BDR 32-314 ADDITIONAL INFORMATION - FUNDING REQUEST

I. Concept
II. Request: Management Analyst II - grade 35
Accountant Technician I - grade 30
Equipment costs
Program costs

III. Distribution/Statistics Section Responsibilities: Consolidated Distribution
Statistical Reporting
Reconciliation
Distribution Analysis

I. Concept

The nature of the consolidated tax distribution legislation will require the department to expand the **Distribution/Statistics Section** within the Administrative Services Division. In fiscal year 1996, the Department accounted for $2.17 billion dollars in revenue collected from the 20 types of taxes. While a portion of this revenue goes to the State of Nevada, 57.2% goes to Nevada local governments. The consolidated tax distribution formula makes it absolutely necessary for the Department to add resources on August 1, 1997 in order to provide the services this new formula will demand. We expect Nevada local governments, public officials and the public will receive a higher level of service associated with the consolidated tax distribution program via an enhanced **Distribution/Statistics Section**. A single center can be contacted for any and all tax distribution amounts and statistics. The opportunity to provide statistical, analytical discussion and interaction between staff and local governments relative to tax distributions will be greatly enhanced. We believe this communication will insure informed alternate distribution decisions that may be made by counties pursuant to section 14 of the bill. The **Distribution/Statistics Section** will closely interact with the Local Government Finance Section regarding governmental issues and with the Revenue Division regarding collection issues.

II. Request

The Department requests funding for the following effective August 1, 1997:

1. Management Analyst II - grade 35. This position will supervise the staff in the Distribution/Statistics Section and will be responsible for the distribution, statistical development, computer formulations, and related tasks associated with the several tax distributions to Nevada local governments, including the new $400 million dollar consolidated tax distribution program.

2. Accountant Technician I - grade 30. This position will be responsible for the processing of the consolidation tax distribution program, including monthly balancing, journal vouchers and voucher payables to local governments.

3. All physical equipment costs associated with the setup of the expanded centralized distribution center. This includes calculators, telephones and computers.

4. Implementation cost associated with the design and operation of the program. This includes demographic survey and operating expenses.

III. Distribution/Statistics Section responsibilities

Establishing the positions on August 1, 1997 allows lead time to hire employees for the requested positions to enable familiarity and understanding of the complexity of this legislation. It will be necessary for these new employees to understand this legislation in time to analyze and interpret the cooperative agreements or base adjustments that will be submitted by local governments due to the Department by December 31, 1997. Due to the magnitude of the distribution, a parallel application would be appropriate for at least four months prior to the effective date for the change in distribution on July 1, 1998. It would be the desire of the section to make the distribution transition for local governments as smooth as possible.

The section goals, applicable to all tax distributions to local governments, will be:

1. Develop and operate a consolidated distribution program that will:
   a. Provide monthly distributions based on statutory criteria.
   b. Provide monthly distributions based on cooperative governmental agreements.
   c. Maintain prior year distribution database for monthly allocation comparisons.
   d. Calculate and maintain YTD distributions based on statutory criteria.

2. Develop statistical presentations that will:
   a. Provide statistics for each component of tax collected.
   b. Provide statistics for county level distributions monthly and annually.
   c. Provide statistics for local government, special district and enterprise district distributions monthly and annually.
   d. Provide assistance to local governments in comprehension of formula and individual impact of changing economic factors, as well as changing statutory factors.

3. Perform reconciliations of the new special revenue fund on a monthly and fiscal year end basis in accordance with generally accepted accounting principles. This includes insuring transfers from the department, counties and other state agencies is timely. Additionally, insure first tier distributions are properly allocated for non-departmental tax revenues such as Real Property Transfer Tax and Motor Vehicle Privilege Tax.

4. Statistical and informational analysis which will include preparing and presenting studies and reports summarizing tax distribution programs to Nevada local governments:
   a. Maintaining a working relationship with entities regarding economic factors triggering distribution changes.
   b. Follow through on questions relative to economic activity reported in the monthly sales and use tax statistical report.
   c. Work closely with the Local Government Finance Section to provide distribution statistics necessary for staff analysts to project budgetary revenues from sales and use taxes.
   d. Work closely with the Local Government Finance Section to provide effect on distribution programs when contemplation of new or consolidated governments are studied.

MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Sixty-ninth Session
March 31, 1997

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 2:05 p.m., on Monday, March 31, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ann O'Connell, Chairman
Senator William J. Raggio, Vice Chairman
Senator Jon C. Porter
Senator William R. O'Donnell
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider

COMMITTEE MEMBERS ABSENT:

Senator Dina Titus

GUEST LEGISLATORS PRESENT:

Senator Ernest E. (Ernie) Adler, Capital Senatorial District
Assemblyman Mark Amodei, Carson City Assembly District No. 40

STAFF MEMBERS PRESENT:

Dana R. Bennett, Committee Policy Analyst
Kim Marsh Guinasso, Committee Legal Counsel
Deborah A. Riggs, Committee Secretary

OTHERS PRESENT:

Warren B. Hardy, Lobbyist, City of North Las Vegas
Robert Dudley Lowery, Lobbyist, City of Henderson
Thomas J. Grady, Lobbyist, Nevada League of Cities
John W. Riggs, Sr., Lobbyist, E Clampus Vitus
Craig Peters, Concerned Citizen, Genoa
Marvin Leavitt, Director, Intergovernmental/Community Relations and Policy Research, City Manager's Office, City of Las Vegas
Guy S. Hobbs, Lobbyist, Nevada Association of Counties
Mary C. Walker, Lobbyist, City of Carson City

Senator Raggio asked what was meant in reference to 1 percent. Mr. Grady explained when land was tied up, without purchase, in the past, advertising and other costs had been incurred. He expressed the 1 percent of the assessed property value was the normal recovery allowance.

Senator Raggio clarified the bill would allow landowners to retain some of the deposit from a potential sale, an amount not to exceed 5 percent. Mr. Grady responded affirmatively.

The chair closed the hearing on A.B. 127, and commenced the hearing on Assembly Joint Resolution (A.J.R.) 4.

ASSEMBLY JOINT RESOLUTION 4: Urges United States Postal Service to consider the historic nature of Genoa when determining size and location of new post office in that area. (BDR R-1163)

John W. Riggs, Sr., Lobbyist, E Clampus Vitus, testified in support of A.J.R. 4. He stated he was completely in favor of the bill and contended the establishment of a full-service post office in Genoa would be invaluable to the city.

Senator O'Connell asked if there was a problem concerning the placement of an oversized building on the Genoa property. Mr. Riggs conceded the assertion of several citizens was the building was too large for Genoa proper. He advocated a smaller, historical-type building would fit in with the history of the community and pointed out a larger distribution center would fit better in the valley.

Craig Peters, Concerned Citizen, Genoa, spoke in favor of the legislation. He maintained the resolution was an important indication of acceptable guidelines in relation to the establishment of a new post office in Genoa. Mr. Peters advocated the importance of building a structure that fits into the town, allowing a hand-in-hand growth into the future. Additionally, the witness emphasized the need for post office boxes in this growing area.

The chairman closed the hearing on A.J.R. 4, and opened discussion on a bill draft request from the interim committee on Senate Concurrent Resolution

(S.C.R.) 40 of the Sixty-eighth Session, which dealt with the distribution of taxes.

SENATE CONCURRENT RESOLUTION 40 OF THE SIXTY-EIGHTH SESSION: Directs Legislative Commission to conduct interim study of laws relating to distribution among local governments of revenue from state and local taxes.

Senator O'Connell requested Marvin Leavitt, Director, Intergovernment/Community Relations and Policy Research, City Manager's Office, City of Las Vegas; Guy Hobbs, Lobbyist, Nevada Association of Counties (NACO); Mary C. Walker, Lobbyist, City of Carson City; Michael A. Pitlock, Executive Director, Department of Taxation; and Mary E. Henderson, Lobbyist, Washoe County, to step forward to testify. Flow charts outlining existing and proposed revenue-distribution information were distributed to committee members (Exhibit C).

Senator O'Connell explained:

> For the sake of the committee, if you look at the top of the picture that is before you, this will give you an idea of how the current distribution of taxes are being distributed. What the committee has done, you will find on the lower portion of the page, so you can see there is quite a bit of work that has been done. If you look at the second page, this clearly identifies how those transactions take place, and if you look at the third page, this shows you on a monthly basis how those taxes are going to be distributed should the Legislature decide to endorse the bill that is going to be proposed to you. We have two BDRs [bill draft requests] that are exactly the same with the exception of section 35, and the technical committee, most of whom are represented by the folks in front of you, have... Did you actually take a vote on which one... Okay, so I am going to pass out, to the committee, the BDR that has been adopted by the technical committee. The difference between the two BDRs would be the base of the distribution formula. So, the BDR the committee is going to be looking at is BDR 32-314. (library note - BDR 32-314 introduced as S.B. 254.)

BILL DRAFT REQUEST (BDR) 32-314: (SB 254) Makes various changes to formulas for distribution of certain taxes.

Senator O'Connell continued:

> Kevin [Welsh, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau], well, actually, both Kevin and Ted [Zuend, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau], were our advisors on this committee, as well as Kim [Marsh Gulnasso, Committee Legal Counsel, Legal Division, Legislative Counsel Bureau], and so I think that between all of us here that we should be able to keep you on track. So, let's see, who is going to start.

Mr. Leavitt commented:

> I think Guy [Hobbs] is going to start. If I could make one comment before he begins. All of the distributions we are talking about here have no effect on the distribution between and among counties. All of this distribution was in individual counties, so there is no effect, whatsoever, between one county and another. It is all within the county, where any change is concerned.

Mr. Hobbs expressed:

> Madam Chair, [I] appreciate the opportunity to be here today with various members of the technical committee. I am sorry that, perhaps, some of the others could not be with us today. I would like to talk, just briefly. I also have some opening comments, about what some of the objectives were underlying the efforts that we as a technical committee, in conjunction with the legislative subcommittee, look toward to base the recommended changes to the distribution formulas upon. These were objectives that were set by the legislative subcommittee early on in the process, and again, helped to guide us toward what you have before you for introduction today. One of the underlying objectives was that any new tax distribution system be revenue-neutral for the affected entities for the first year. This would be assuming constant or current service levels for each entity. In other words, the

legislative subcommittee and the technical committee both felt that to do anything other than hold all of the entities harmless in the base year would be too disruptive to their existing service levels; and so it was a set objective we would begin in the base year with the amounts of revenue that they otherwise would have realized under the former series of distribution formulas that we were dealing with. Also, the committee felt it was very important that future revenue be channeled, as much as possible, toward where growth is occurring within each county. I believe Mary Walker will speak to this point a little bit later on. Under the several systems that we had previously, some of them dealt with population solely, some of them dealt with assessed valuations, some of them included counties, some of them excluded counties, and various combinations in between. And, so, we were looking to try to create a system that would be a little bit more responsive to where growth is occurring within each one of the counties. Another objective is that any new tax-distribution system help reduce competition among local governments. We have seen and heard cases in the past that involve the creation of a new city, in some cases, solely based on the fact that they might share in some revenues because of the way the statutes have been written in the past; basic cigarette and liquor come to mind, real-property transfer tax would be another example. In this particular example, it would create competition, potentially, among the various entities, in the creation of new entities down the road. We, also, taking that point and flipping it around a little bit, as an objective, wanted to ensure that any new tax-distribution system helped to encourage more regional cooperation among local governments within a county. This is a point we spent a considerable amount of time on, in terms of trying to identify ways that existing units of government could potentially merge, in the future, without some of the penalties that exist under current law. In other words, if one entity was to dissolve and be absorbed by another, there are sets of formulas or sets of statutes that deal with that right now, but in some cases, the allowed revenues that they had from various taxes would otherwise go away, and we certainly wanted to remove that disincentive to rational mergers and consolidation. Also, the committee set criteria for, and perimeters for, the creation of new units of local government and for the treatment of any new local governments and special districts in the distribution ~~formula.~~

> Clearly, this was a case that arose last session, and I know over the years has come up a number of times; if a new entity is created, how will they participate in the distribution of various revenues. That was something that probably acted as much of a catalyst in the beginning of this process as anything, and also was something that we paid very close attention to throughout. As Mr. Leavitt said, and I think it is a very important point, there are specific things that the bill proposes to do, but there are also some that it definitely does not do, and he has already underscored one that I wanted to mention as well, and that is the fact that it deals with the second tier of revenue distribution, not the first tier, not the inter-county tier of revenue distribution, only the distribution within a county among the various local governments. It also does not include any proposals that would eliminate existing special districts or general improvement districts. There has been a tremendous amount of focus, by the technical committee, on special districts, and in particular, a group of special districts that we called the enterprise districts: those that provide solely enterprise-type activities...

Chairman O'Connell interjected:

> Guy [Hobbs], let me just stop you there, and for the committee's information, this is a point that was not unanimously agreed to. Most all of the other issues that are brought to you in this BDR form were agreed to unanimously, but this particular point was not. It certainly was not agreed to by the technical committee, either, and that is because in your special districts, they do not have any of the responsibility to share in any of the social parts of government, as far as they do not contribute to that. However, they are taking money away from that purpose, and that is something that those of us that were in disagreement with this felt was not fair to the county governments. I just [wanted to] bring that to your attention. We did agree to have it in here, but we thought that things such as TV districts and swimming pools did not belong receiving some of that Supplemental City-County Relief Tax (SCCRT). So, just, again, for your information.

Mr. Hobbs stated:

> Just one final point on things the proposal does not do. It does not cause a loss of existing revenue for local governments. Rather, the effect of the divisions in the formula would be to cause an adjustment in future revenues that might be received. Certainly, if you were to compare that to the old series of formulas that we had in place, some local governments may have, in fact, gained more revenue under the old formulas than they will under the new, and conversely, some would have had less under the old formulas than the new. Again, what we have tried to do is [to] consolidate a series of six different distribution formulas into one that, we hope, is also more responsive to growth and, also, holds the local governments harmless in the initial years, and in the long run, proves to be a more simplified and effective way of distributing the six revenues that were under discussion. At this point, I know that Mary [Walker] had done a considerable amount of analysis comparing the old system, and some of its features, to some of the attributes of the new system we have been proposing.

Ms. Walker expounded:

> For the record, [I am] Mary C. Walker, [Lobbyist, City of Carson City] Carson City Finance and Redevelopment Director. As the [Nevada Association of Counties] NACO representative for the rural [counties], one of the things I wanted to make sure of was that whatever tax programs that we come up with were going to work for the rurals. I went back over a 3-year period and said, okay, if this tax change was in effect over the last 3 years, how would that vary from what they [the rural counties] actually did receive. What I found out is that I don't think you will ever get to a perfect tax system, but this is 100 times better than the current system we currently have for one major reason, and that is because the current system really does not follow growth. You can see that. Let me give you one example. There is an entity that has four different local governments in it, and this is a rural county. In one of the areas the town actually had a 24-percent [loss] in combined population and assessed valuation, but yet it received a 30 percent increase in its taxes, in these combined taxes. The entity that

grew the most, in that one particular county, grew by 12 percent in population and assessed valuation, but received the lowest increase in taxes. So, what is happening, and I think the rurals are a real good example of how you can look at the system, because you can look at it in kind of a microscope. What actually was happening is as one entity within the county, again as Marv stated, we are talking inter-county. What is happening is as one entity grows, they are actually getting less revenue growth than the other entities, so it is not following your shift in your taxpayers. What is happening, then, is because the money does not follow the taxpayers, then the service levels don't follow the taxpayers. What this formula does is it bases its revenue distribution, as Guy stated, everybody receives a base amount and then anything above and beyond that is divided up by the amount of growth that they have in assessed valuation and population. So, therefore, what happens is your service levels, the money will follow your service level needs. That's the basic premise of this. There are several entities that we saw that in, and that, to me, was the checks and balance that this type of a system would work. As Madam Chairman had stated, the other problems that we saw were some of the taxpayer inequities in regard to some of the special districts. The thing that we saw in the enterprise districts where you have sewer, water, or TV districts, and these are real-life examples that we were looking at, and it was quite interesting, although I do not think the taxpayers would like to hear this. Let's take, for example, in one county where you have sewer and water districts that are actually receiving either [Supplemental City-County Relief Tax] SCCRT or some kind of general taxes, or another example is TV districts. What's happening is right across the street from one another, a taxpayer could be paying its sewer and water bill, it could be paying its ad valorem taxes and its sales taxes, but right across the street, unknown to people because it is all kind of within these tax structures that are complicated, nobody really understood that taxpayer was also paying and subsidizing the sewer and water bill for the person across the street, when they are paying their own bill. Same thing with TV districts. There are a couple of TV districts in the state where you have the rest of the county residents who are paying their cable TV bills, they are paying their ad valorem, their sales taxes and all their other taxes, but unbeknownst to them, they are also paying for the free TV that

they get in certain areas within that county. So, what we saw in there was that there was a taxpayer-equity problem and we tried to rectify that, and as Senator O'Connell has stated, I think the technical committee and what the discussion was with the legislative committee, is that we had to somehow resolve that taxpayer-inequity issue. That was one of the major items of discussion that we had.

Mr. Leavitt summarized:

Madam Chairman, Marvin Leavitt. If I might, I would like to discuss with you some of the aspects of the basic formula that we are talking about. I think you can recognize it in a hearing such as this. We are not going to go into the detail we will later on when we actually have a hearing on the bill, but just so you can have a general idea as to how this works. As Guy [Hobbs] mentioned, we have essentially taken six taxes: the supplemental city-county relief tax, the basic city/county relief tax (both those two are sales tax, of course, equaling 2.25 cents of the sales tax between them), the motor vehicle privilege tax, the real-property transfer tax, the cigarette tax, and the liquor tax, which each are right now distributed by a separate formula and received by different levels of government. We have essentially taken that and put all of those into one pot and said we are going to distribute those according to one formula and we are going to recognize that we are going to start off with a base that is the amount that each one of the governments are receiving from those particular taxes, the group of them. Even though all of them do not receive all taxes, if you take the amount that they are receiving from the total of these in the pot, each one starts out essentially where they are now. I think that is an important part of the formula. We can discuss how we compute the base in a few minutes, but essentially, they start out where we are now, and then we have a formula that says essentially we are going to consider that we have three types of entities. We have one enterprise district, which are the type that Mary [Walker] had previously discussed, which are TV districts that normally, in most cases, levy a charge for service directly to the people that receive it, or, an example would be a sewer fund where you levy a charge to the users. We call those enterprise districts. The other one, we have a special district, which

essentially is everything other than an enterprise district, city, county, or town. So, that is sort of a "catchall." Then, we have a third category which is a county, a city, or a town. Using those three [definitions], we have kind of designated those three as the general purpose governments. They are the ones that provide a wide variety of services. You know, normally they have police, fire, parks, planning, and all the services we normally associate with general-purpose government. Because of that, there has been a feeling that general-purpose government is the desirable of all the little forms of government that we have because they can make a conscious decision, on an annual basis, about service levels. If you have a special-purpose government that provides only one service, and they have, get money from taxes to do it, that amount will continue indefinitely down the road whether there is, whatever happens to that district. Maybe even the need has mostly gone away after 20, 30 years, but as long as we have this special-purpose government, they continue to receive these moneys. Because of that, each one of these is treated differently. I'll go through, briefly, how they are treated. First of all, enterprise districts would receive from the pot, so to speak, on an annual basis, the amount they received in the base year. That would not grow. So, the amount they received in the base year, and as the chairman indicated, there has been considerable discussion among various people about whether they should receive anything from the pot, but take responsibility, through service charges, for the entire operation, but according to the formula we have in the bill right now, they would receive, indefinitely, the same amount. So that any growth in the future would have to come from service charges.

Senator O'Connell interjected:

Marvin, let me just add to that. The discussion was mainly based around any bonding indebtedness that they had, and of course the committee felt that their funds should not be taken away until that bond indebtedness was satisfied, but at that time, then they should no longer be included as part of the formula.

Mr. Leavitt asserted:

> They would also be prohibited from issuing debt in the future, under this bill, for debt that is to be repaid by this source of revenue. In other words, if they had some already that could be repaid, but any debt in the future, they cannot issue subject to payment from this source. Now, the other types of governments, the local governments: counties, cities, and towns, and the special districts, would receive, if there is money sufficient in the pot, on an annual basis, an amount equal to the growth in the consumer price index. That would be off the top, so to speak. Then, if there is money remaining after that, the general-purpose governments (the cities, counties, and towns), would receive an amount calculated by determining their growth in population and their growth in assessed value, in combination. Special districts would include only their growth in assessed valuation. So you see, they are treated [in a] slightly different [way] than the other local governments. And, so, as a result, the revenue from this pot, we would expect over time, that the general-purpose governments, on the amount available after we determine the amount to be distributed, because the consumer price index (CPI) will grow faster, in revenue, than the special-purpose government, the special districts. So, in that case, we have a special reward, so to speak, for the general purpose [fund], which, it has been the hope of the committee that over time, would encourage consolidation of the special districts into the more general districts. When we looked at the special districts around the state, we determined that in many cases, if you combined all of the special districts into one locality, you essentially have a city or town. Yet, each one of these are operating independently, trying to spend money independently.

Senator O'Connell added:

> And, just for the committee's benefit, also, I think that is what you are going to be looking at when and if we do receive a BDR or a bill that would talk about breaking Douglas County up into another county. That specifically hits on this particular issue.

Mr. Leavitt responded:

> We recognize the fact that maybe in a few instances, back at the time we had the initial tax switch in 1981, using 1981 for the particular base year because of unusual situations, in that entity, we perhaps have treated a few entities unfairly. Because of that, there will be a onetime opportunity for entities who feel that has happened to them to appeal their base. So, in other words, if they have some unusual situation that affects them. For some reason, they had levied an unusually low property tax rate in the base year before we get into the 1981 and 1982 fiscal year, then maybe that, plus other circumstances, would allow them, would make them [realize] they [distributions] are unfair and they [counties] could have a onetime opportunity [to appeal].

Senator O'Connell pointed out:

> And, we do have two such circumstances in North Las Vegas and also in Henderson, that this would definitely have an impact on.

Mr. Leavitt replied:

> Yes, we have received indication that they would likely appeal, and I have heard indications that perhaps the City of Reno has similar feelings. I don't know if they would choose to appeal, because each government would have to choose afterwards. Another important thing in the bill we have provided...

Senator Raggio queried, "Who is the appeal to?"

Mr. Leavitt responded:

> The appeal is to the Nevada Tax Commission. [The commission] eventually makes the decision after analysis by the department [Department of Taxation] and the review by the committee on local government finance. We have also provided a procedure that if the individual local governments, within a county, decide that they would like to use a formula that is different from the general formula...In other words, if they say the general formula does not

work for us and we would like to come up with something different, they can indeed come up with something different as long as all the participants agree. There is greater flexibility built into the system. So, that if, even in the future, if sometime one government decides to take on a service that has previously been provided by someone else, there is an ability to change revenues to accomplish this. The second thing we provided for the combination of governments, Guy [Hobbs] had mentioned this, without loss in tax revenue. Under the circumstances now, we almost discourage the combination because if you do that, you have an effect on your revenue. Under this new system, you would not have an effect on revenues. In fact, it might well improve your situation if you become a consolidated government in either a city or a town. So, there is that provided. We provide for the creation in this bill of new entities and, since we are really combining all revenues in the pot, the effect on any one individual government would most likely be less than it is under the current distribution scheme. In each case, there are definite procedures that have been indicated in the bill, by which this is done, and most of it goes through the department. That is essentially the way the system would work. I think Mike [Michael A. Pitlock, Executive Director, Department of Taxation] had some comments about the department's involvement in this, and their involvement in the process leading up to this.

Mr. Pitlock summarized:

Madam Chairman, members of the committee, for the record [I am] Michael A. Pitlock, Executive Director for the Department of Taxation. On the surface, it may appear that this is a completely local issue and that there really is not a significant role for the state, but that is not so. The state has a significant role to play in this process through the Department of Taxation. The department currently collects and distributes most of the local-government revenue. As a matter of fact, over 70 percent of the collections that the department makes is for local government. This particular bill sets the department up as a facilitator or administrator of the revenue pool. We handle the collection and distribution, the implementation of the formula, as outlined in the [bill draft request] BDR. We also act as the administrator, in terms ~~of hearing~~

disputes over the base. If a local governmental entity wants to challenge the base that is set, he files an appeal with the department, the department will investigate it, make recommendations to the committee on local government finance, and ultimately to the Nevada Tax Commission. Also, as Marvin [Leavitt] indicated, it allows for flexibility for counties, and local governments within the county, to come up with their own hybrid formula. Those formulas are also reviewed by the department, and it does not necessarily have to be all the local governments. However, many local governments in a county agree they are able to redistribute their own portion of that county pool. The department plays a significant role in the finance of local government and this bill will continue that. Through the administration of the Local Government Budget Act, we are involved on a daily basis with the budgets of all local governments. We view ourselves as a resource for those local governments to provide budgetary expertise and fiscal expertise to the entities that maybe cannot afford to have it on their own. Through the exercise of that authority, we have found that one of the needs, one of the greatest needs for most local governments, is cash management. We hope to be able, through the administration of this pool of revenues, to be able to provide additional cash management services to the local governments, to help them in their day-to-day fiscal management.

Senator Shaffer questioned:

Michael [Pitlock], some of the inequities that may exist for Reno and North Las Vegas, what can the commission address that this committee could not address now? Why wouldn't it be addressed right now, not requiring these entities to go before the tax commission for a remedy?

Mr. Pitlock clarified:

I think you are looking at, actually, the policy issue that this committee is looking at, is whether or not you want to go through that detailed of an analysis to try to determine the cause for any perceived inequities in the formula, and actually through what I view to be an evidentiary proceeding, hear testimony, and make a

decision that would reallocate those bases. I believe that it is better public policy for the Legislature to set the general direction and policy and then allow the department and the local governments to establish the administrative procedure to then carry out that policy, as opposed to actually hearing the detailed evidence on what may or may not be a problem with a given base.

Chairman O'Connell addressed Senator Shaffer:

Ray [Shaffer], to add to what Mike [Pitlock] has shared with you, the problem with North Las Vegas and Henderson, specifically, and I am not sure about Reno, was that they had such a low operating rate to begin with. In that formula in 1981, you know they did not have the bonded indebtedness, and so now, all of their indebtedness falls into that category. They have had to stretch to really have the part of formula that they should have. You cannot change that, you cannot change that again without going back, because every card that you turn over turns over 20 more. So, you would have to go through this very same process we have been through in order to achieve any correction in it.

Senator Shaffer commented:

I guess they are actually being chastised for being more fiscally responsible now.

Mr. Leavitt asserted:

We have a variety of circumstances around the state. Say, for instance in North Las Vegas, they had a lot of debt associated with warehouse district. Because they had to pay so much for debt, they had a relatively low operating rate because they had a high debt at that time, and so they are saying, and I think the argument will be, since we had a low operating rate at that time, much lower than everyone else, and the operating rate was what was used to determine existing formula, why couldn't we bring this up. The advantage of a bill like this, [is] it includes a lot of due-process proceedings whereby their petition is made, there is opportunity given for the local governments to protest or state their position,

and then a final determination. I think everyone in the end will be satisfied that at least a process has been followed.

Senator Shaffer stated:

I guess my concern on behalf of North Las Vegas, and incidentally, I represent only about one-third of North Las Vegas, and mostly the county, so I am not just taking a position on behalf of North Las Vegas solely. But, the fact that if you are going to take something away from any other entity, it is very hard for them to agree to give it up just because one entity may feel different about it. So, it is very hard, after we get out of the legislative environment, to win a case and the position they would be in.

Mr. Leavitt answered:

The good thing, I think, is the Nevada Tax Commission are the final arbitrators, and they essentially do not represent any of the local governments. They are probably diverse as the Legislature itself, so...

Mr. Hobbs interjected:

Senator, just an added point. In the recent weeks, representatives of the City of North Las Vegas and Clark County, I'm less sure about Henderson, and the City of Las Vegas, have all had dialog regarding this particular feature of the proposal. In reference to what is being termed the tax-fairness issue down in Southern Nevada, and how this might be used to remedy part of the tax-rate differentials that currently exist. There have even been some informal agreements, at the staff level, struck in terms of how they would use this particular mechanism to help mitigate part of that existing problem. So, it does offer an avenue that previously was unavailable to the local governments to use.

Ms. Henderson remarked:

I wanted to talk briefly about the continuation of the committee's work and the advisory committee's work. I think one key point that I would like to make before I jump into that is that one issue

that was very critical to Washoe County, and I think northern Nevada governments in particular, was that what we wanted to try to avoid in the formula, was competition for revenues. Putting local governments into making land-use, planning, and annexation decisions based on a need for additional revenues. We feel that with this formula, and especially with the alternative distribution method, because when you do have a statewide formula, it does play out differently based on what the drivers are in that formula. But, this would allow some regional needs to be addressed and would start pulling us out of that [situation]. If it is not just growth 100 percent for us, it is that competition for the revenues, as well. And, that was a real critical factor to us in northern Nevada. Basically, we feel that, the committee, at least, is recommending... Your technical committee is recommending that we continue our work. We have two major areas that are still under study right now, one is the special districts and enterprise funds. We may have some limited legislation coming on that, we have a survey out on special districts and enterprise funds right now. My guess is, though, that probably we will not complete that work, at least by the end of this session, considering the lateness, by the time this bill came out. The other area is the fuel-tax area and Mary Walker has been chairing that committee, working on how we do distribution of fuel tax. It is a very complex formula. Going back to 1955, basically, it impacts, in particular, rural counties to a very significant degree and we feel that there are a lot of underlying policy issues that we still need to address, and some fairness and equity issues to the other local governments. So, that component of it is critical, and it has been a massive job just to get to the point where we are right now with fuel tax. In talking with other members of the committee, particularly Marvin [Leavitt] and Guy [Hobbs] this morning, [there are] a couple of areas, too, that we think we still need to look at. There are some archaic areas of statute and some rather unclear, conflicting statutes that deal with the distribution of tax revenues in the state. We feel that this would be a good opportunity to continue those reviews. One that came to mind was urban renewal, for example. There are various areas that actually deal with the distribution of revenues to local governments, that some of us, most of us, are not even using, have not used. Maybe we want to consolidate and bring those into better focus, as well and hopefully, clear up some gray areas for

people. So, we are hoping that the committee's work can continue, that the technical committee can continue.

Senator O'Connell stressed:

> I wanted you all to have this exposure to the bill, even prior to the hearing, because as you can see, it is not a simple housekeeping bill at all. This changes the way that the counties do business and it is very, very important to the counties. We have so many taxes that have not been looked at all for 16 years and more, and needless to say, we are not the same state that we were 16 years ago. The technical committee, I just won't ever be able to tell them how much we appreciate all the work that they have done over the last 18 months. They ran hundreds and hundreds of numbers and formulas. Everybody that is seated before you was very much involved in that and gave up an awful lot of their time to do [it]. Because of the work of the technical committee, specifically, the commission allowed them to continue on, even after our report was turned in, which is something that had never been done before. Because of the recognition of their expertise and how well everybody worked together, they have been allowed to do that. So, the second bill that you are going to be seeing for a bill introduction is to allow a continuation of this committee, as it was formed last time, and of course, with the technical committees involvement, as well. So let me pass out to you now that bill draft. It would not be heard in this committee, it would go to [the Senate Committee on] Legislative Affairs and Functions [Operations]. Does the committee have any comment or question that you would like to ask these folks? Is there anyone else in the room that would like to make any comment on the introduction?

Mr. Leavitt mentioned on the wonderful performance of Ms. Guinasso. He discussed the huge task Kim had completed and thanked her for her efforts.

SENATOR SCHNEIDER MOVED FOR COMMITTEE INTRODUCTION ON BILL DRAFT REQUEST (BDR) 32-314.

SENATOR PORTER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS O'DONNELL AND TITUS WERE ABSENT FOR THE VOTE.)

*****

The chairman then requested a motion on BDR 17-193.

BILL DRAFT REQUEST 17-193: Creates legislative committee to study distribution among local governments of revenue from state and local taxes.

SENATOR PORTER MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST (BDR) 17-193.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS O'DONNELL AND TITUS WERE ABSENT FOR THE VOTE.)

*****

Chairman O'Connell opened the hearing on Assembly Bill (AB) 237.

ASSEMBLY BILL 237: Amends charter of Carson City to authorize imposition of local sales and use tax for open spaces, parks, trails, and recreational facilities. (BDR S-907)

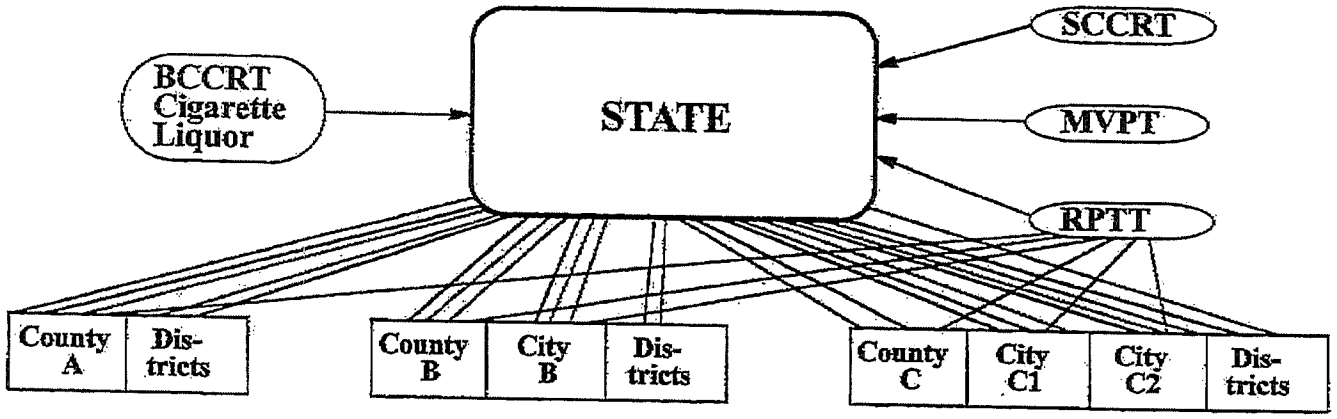
Assemblyman Mark Amodei, Carson City Assembly District No. 40, explained the purpose of A.B. 237. He expressed the bill was enabling legislation which allowed the Carson City Board of Supervisors to carry out the dictates of Question 18 on the November General Election Ballot, known locally as the "quality-of-life" initiative.

The assemblyman stated in the measure, the voters of Carson City, by a 56-44 percent vote, approved a ¼-cent sales-tax increase, which would be used for maintenance and open-land acquisition. He stressed the Assembly approved the bill unanimously.

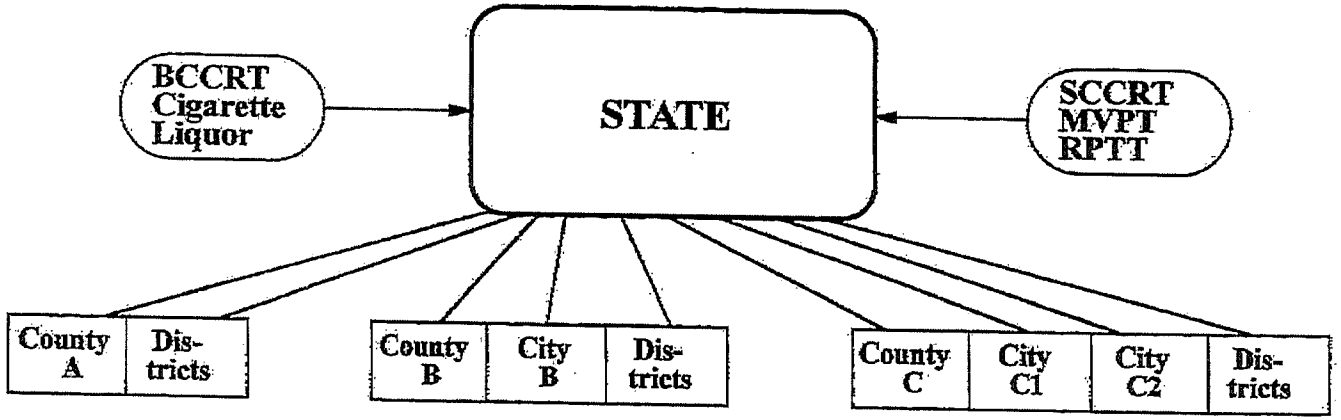
Ray Masayko, Mayor, City of Carson City, was asked to testify next. Mr. Masayko assured the committee the Carson City Board of Supervisors was

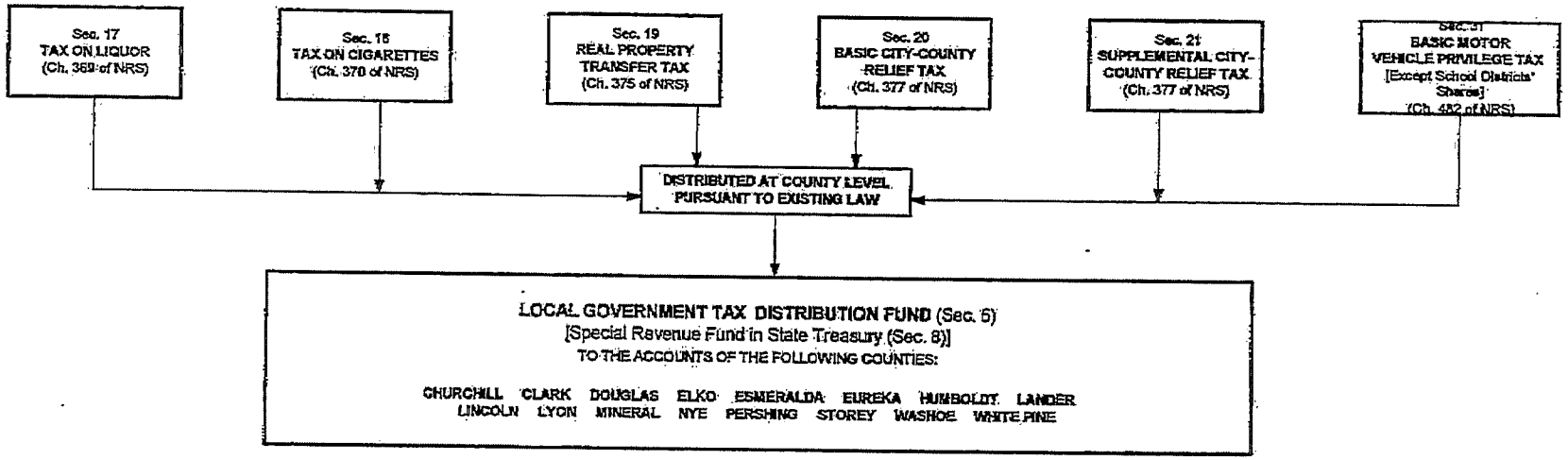
SCR 40 Interim Subcommittee

Existing Revenue Distribution



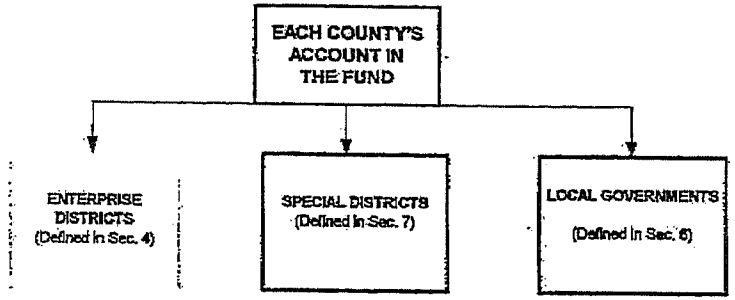
Proposed Revenue Distribution





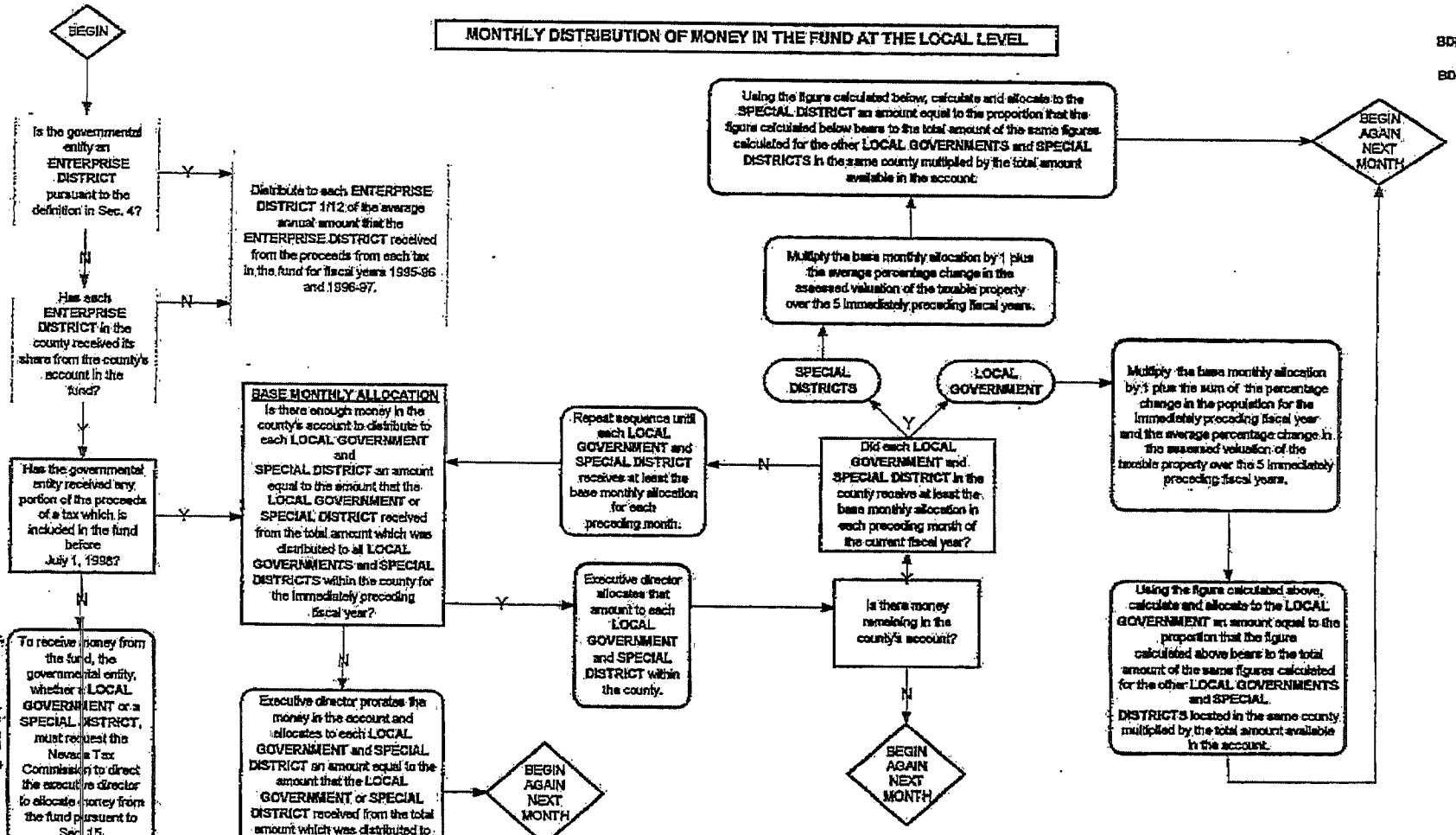
LOCAL GOVERNMENT TAX
DISTRIBUTION FUND

BDR 32-187
and
BDR 32-314



MONTHLY DISTRIBUTION OF MONEY IN THE FUND AT THE LOCAL LEVEL

BDR 32-187
and
BDR 32-314



Y = Yes

N = No

Prepared by Legal Division, Legislative Counsel Bureau

MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Sixty-ninth Session
April 14, 1997

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 2:05 p.m., on Monday, April 14, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ann O'Connell, Chairman
Senator William J. Raggio, Vice Chairman
Senator Jon C. Porter
Senator William R. O'Donnell
Senator Raymond C. Shaffer
Senator Dina Titus
Senator Michael A. (Mike) Schneider

STAFF MEMBERS PRESENT:

Dana R. Bennett, Committee Policy Analyst
Kim Marsh Guinasso, Committee Counsel
Deborah A. Riggs, Committee Secretary

OTHERS PRESENT:

Guy S. Hobbs, Lobbyist, Nevada Association of Counties
Mary C. Walker, Lobbyist, Director, Finance/ Redevelopment, Carson City
Mary E. Henderson, Lobbyist, Washoe County
Marvin Leavitt, Lobbyist, Director, Intergovernment/Community Relations and Policy Research, City of Las Vegas
Candi Rohr, General Manager, Kingsbury General Improvement District
Tom Fransway, Chairman, Board of Commissioners, Humboldt County
Mike L. Baughman, Lobbyist, Lander County
Theresa L. Glazner, Staff Budget Analyst, Department of Taxation
Carole A. Vilardo, Lobbyist, Nevada Taxpayers Association
Patrick Finnigan, General Manager, Incline Village General Improvement District

Chairman O'Connell commenced discussion on Senate Bill (S.B.) 254.

SENATE BILL 254: Makes various changes to formulas for distribution of certain taxes. (BDR 32-314)

The chairman discussed a flowchart which outlined the current tax distribution in the state and proposed tax distribution amendments (Exhibit C).

Guy S. Hobbs, Lobbyist, Nevada Association of Counties, invited Mary C. Walker, Lobbyist, Director, Finance/Redevelopment, Carson City, and Mary E. Henderson, Lobbyist, Washoe County, to explain the objectives of the technical advisory committee (a subcommittee established in accordance with Senate Concurrent Resolution (S.C.R.) 40 of the Sixty-eighth Session) which devised the distribution formula contained in S.B. 254.

SENATE CONCURRENT RESOLUTION 40 FROM THE SIXTY-EIGHTH SESSION: Directs Legislative Commission to conduct interim study of laws relating to distribution among local governments of revenue from state and local taxes.

Mr. Hobbs commented he would present a section-by-section analysis once the objectives of the technical advisory committee were explained to committee members.

Ms. Walker indicated when the technical advisory committee commenced various and different types of revenues were examined. She mentioned there was more input from the different levels of government than any type of statewide legislation previously. Some meetings were attended by 75 people or more who expressed their thoughts and viewpoints with regard to the different revenue and distribution formulas under review, Ms. Walker remarked. Additionally, she commended Senator O'Connell for her fair and "even-handedness" when dealing with this issue and stated it was a very democratic-type of a process.

Ms. Walker outlined when the technical advisory committee began the study, there were several very key things the committee was interested in, as far as goals and objectives of the S.C.R. 40 of the Sixty-eighth Session committee. She stated a main concern was the ability to maintain revenue neutrality so there was not a big revenue increase and decrease between one local

government and another, which could very well trigger additional tax increases. Secondly, Ms. Walker noted, the committee wanted to ensure any distribution formula established followed growth, reduced competition amongst local governments, encouraged region cooperation, recognized tax effort, and established criteria for new entities.

Ms. Walker contended the Senate Committee on Government Affairs' members would see, in the bill before the committee, revenue-neutrality for the first year. In addition, she recognized, future revenue distribution was based upon growth and could meet the demands for service. In reviewing the method for establishing the current formula, Ms. Walker outlined, in some counties the actual population and assessed valuation decreased, and the entity saw a 30 percent revenue increase. Other communities within the same counties with the highest growth of population and assessed valuation saw the lowest growth in revenues. Ms. Walker stressed it was important to recognize the distribution formulas contained in S.B. 254 were not revenues distributed from one county or another county, but revenues distributed within a county, amongst the cities, counties and general improvement districts (GID) within one entity. She emphasized the technical advisory committee wanted to ensure the revenue distribution was based upon growth, which, in turn, ensured different entities had revenues available to pay for growth and increased service demands.

Ms. Walker asserted a secondary concern was reducing the competition amongst local governments. One of the items the Department of Taxation pointed out was when a potential GID or local government was interested in becoming new entities, the GID or local government called the Department of Taxation and asked the amount of revenue which could be gained if the entity incorporated into a city or GID. She maintained the technical advisory committee wanted to ensure if entities were looking at proliferation or incorporation, the need had to be measured based upon service-level considerations and not in competition for tax dollars.

Ms. Walker expounded S.B. 254 also simplified the tax distribution by utilizing one formula, as opposed to six different formulas, which entailed the elimination of the 1981 distribution factor. Some more recent formulas had been based upon the tax rate of the entity in 1981, which had no relationship to the service-level needs within the community. The technical advisory committee opted to eliminate factors which were not relevant today, Ms. Walker opined. She noted the bill encouraged local government regional cooperation and explained if two or more local governments agreed to a different distribution within a county, the

local governments could implement the alternate distribution through the Department of Taxation and the Nevada Tax Commission. Ms. Walker expressed there was another key point contained within the legislation. There were some local governments in Nevada which had been complaining for 15 years that their 1981 base revenues did not meet the demands for service at that time and then were frozen at that base. Ms. Walker pointed out this was the first time in 15 years that a local government could appeal the base-revenue rate. She recited the bill set up a mechanism where new towns would be treated equally and would not have to appeal to the Legislature.

Ms. Walker expressed there was much discussion on the differentiation between enterprise and governmental activities. Enterprise activities were those types of activities which were proprietary in nature, a user fee paid for the services, and were generally services found in the private sector: sewer and water, and television services, Ms. Walker defined. She maintained it was discovered during the examination of different revenues that there were taxpayer inequities. Ms. Walker drew attention to the Verdi Television District. She recited there were currently a few television districts in Nevada which were subsidized by sales tax dollars. Within that county, most of the taxpayers were remitting their cable fees through the cable company. Unbeknownst to the same taxpayers, they were also paying for Verdi's Television District, which provides free television cable in Verdi, Ms. Walker declared. She acknowledged this and many other oversights were due to the revenue-distribution formula currently in statute. Due to these oversights, the technical advisory committee chose to freeze subsidies provided to enterprise districts, Ms. Walker concluded.

Ms. Henderson echoed the sentiments expressed by Ms. Walker concerning the process of the technical advisory committee over the last 18 months. She reemphasized the process was one of the most open and inclusive processes to occur in an interim study committee. Ms. Henderson pointed out the accomplishments of the technical committee were astronomical considering the limited time frame involved, the number of archaic laws dating back to the 1950s, the attempt to determine the origination of the policy issues which were the cause of the problems, and the necessity to create a formula which would fit into the Nevada of the 1990s, the year 2000, and beyond. She remarked it was a challenge for the technical advisory committee members, the Legislative Commission and the people from special districts and cities and counties throughout the state. Ms. Henderson drew attention to a companion bill to S.B. 254 (Senate Bill (S.B.) 253) which would allow the work of the technical advisory committee and the Legislative Commission to continue. She relayed

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Appellant, vs. THE STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION; THE HONORABLE DAN SCHWARTZ, in his official capacity as TREASURER OF THE STATE OF NEVADA; and THE LEGISLATURE OF THE STATE OF NEVADA, Respondents.	Supreme Court No.: 66851 District Court Case No.: 12 OC 00168 1B

JOINT APPENDIX

VOLUME 1 PART 2

Filed By:

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1	Affidavit of Service Taxation	City of Fernley	07/02/12	17
1	Affidavit of Service Treasurer	City of Fernley	06/20/12	13-16
23	Amended Memorandum of Costs and Disbursements	State of Nevada/Dept Taxation	10/09/15	4058-4177
7	Answer	State of Nevada/Dept Tax/ Treasurer	02/01/13	1384-1389
7	Answer to Plaintiff's Complaint	Nevada Legislature	01/29/13	1378-1383
23	Case Appeal Statement	City of Fernley	11/07/14	4208-4212
1	Complaint	City of Fernley	06/06/12	1-12
21	Defendant Nevada Legislature's Reply in Support of its Motion for Summary Judgment	Nevada Legislature	07/25/14	3747-3768
21	Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs	State of Nevada/Dept Taxation	10/03/14	3863-3928
22	Defendant's Opposition to Motion to Retax Costs and Reply to Opposition to Motion for Costs (Cont.)	State of Nevada/Dept Taxation	10/03/14	3929-3947
1	Exhibits to Joinder in Motion to Dismiss	Nevada Legislature	08/16/12	104-220
2	Exhibits to Joinder in Motion to Dismiss (Cont.)	Nevada Legislature	08/16/12	221-332
1	Joinder in Motion to Dismiss	Nevada Legislature	08/16/12	62-103
7	Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	Nevada Legislature	05/06/14	1421-1423
21	Memorandum of Costs and Disbursements	State of Nevada/Dept Taxation	09/19/14	3788-3793
21	Motion for Costs	State of Nevada/Dept Taxation	09/19/14	3776-3788
12	Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order	City of Fernley	06/18/14	2005-2045
7	Motion for Summary Judgment	City of Fernley	06/13/14	1458-1512
8	Motion for Summary Judgment (Cont.)	City of Fernley	06/13/14	1513-1732
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10	Motion for Summary Judgment (Cont.)	City of Fernley	06/13/14	1917-1948
11	Motion for Summary Judgment (Cont.)	City of Fernley	06/13/14	1949-2004
1	Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	08/03/12	41-58
1	Motion to Intervene	Nevada Legislature	08/03/12	18-40
21	Motion to Retax Costs and Opposition to Motion for Costs	City of Fernley	09/24/14	3794-3845
7	Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	05/05/14	1414-1420
7	Nevada Department of Taxation and Nevada Treasurer's Reply to Response to Renewal of Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	05/23/14	1433-1437
12	Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment	State of Nevada/Dept Taxation	07/11/14	2053-2224
13	Nevada Department of Taxation's Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	State of Nevada/Dept Taxation	07/11/14	2225-2353

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22	Notice of Entry of Order	Nevada Legislature	10/08/14	4001-4057
23	Notice of Entry of Order	State of Nevada/Dept	10/17/14	4195-4204
7	Notice of Entry of Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012	State of Nevada/Dept Tax/ Treasurer	12/19/12	1364-1370
7	Notice of Entry of Order Granting A Continuance to Complete Discovery	City of Fernley	10/19/12	1344-1350
3	Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene	Nevada Legislature	09/04/12	651-657
7	Notice of Entry of Order on Defendant's Motion for Extensions of Time to File Answer	State of Nevada/Dept Tax/ Treasurer	11/15/12	1354-1360
1	Notice of Non-Opposition to Legislature's Motion to Intervene	State of Nevada/Dept Tax/ Treasurer	08/06/12	59-61
2	Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F)	City of Fernley	08/20/12	331-441
3	Opposition to Motion to Dismiss and Motion for Continuance Pursuant to NRCP 56(F) (Cont.)	City of Fernley	08/20/12	442-625
2	Opposition to Motion to Nevada Legislature's Motion to Intervene	City of Fernley	08/20/12	324-330
13	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	City of Fernley	07/11/14	2354-2445
14	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2446-2665
15	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2666-2819
16	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2820-2851
17	Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss (Cont.)	City of Fernley	07/11/14	2852-2899
4	Opposition to Nevada Legislature's Joinder in Motion to Dismiss	City of Fernley	09/28/12	662-881
5	Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)	City of Fernley	09/28/12	882-1101
6	Opposition to Nevada Legislature's Joinder in Motion to Dismiss (Cont.)	City of Fernley	09/28/12	1102-1316
17	Opposition to Nevada Legislature's Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	City of Fernley	07/11/14	2900-2941
20	Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order	Nevada Legislature	07/11/14	3586-3582

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12	Opposition to Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order and Countermotion for Order Dismissing Nevada Department of Taxation	State of Nevada/Dept Tax/ Treasurer	07/11/14	2049-2052
17	Opposition to Plaintiff's Motion for Summary Judgment	Nevada Legislature	07/11/14	2942-3071
18	Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	Nevada Legislature	07/11/14	3072-3292
19	Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	Nevada Legislature	07/11/14	3292-3512
20	Opposition to Plaintiff's Motion for Summary Judgment (Cont.)	Nevada Legislature	07/11/14	3515-3567
7	Order (Converting Motion to Dismiss to Motion for Summary Judgment, Setting Briefing Schedule and Dismissing Treasurer)	First Judicial District Court	06/06/14	1451-1457
22	Order and Judgment	First Judicial District Court	10/06/14	3948-4000
7	Order Denying City of Fernley's Motion for Reconsideration of Order Dated November 13, 2012	First Judicial District Court	12/17/12	1361-1363
7	Order Granting A Continuance to Complete Discovery	First Judicial District Court	10/15/12	1341-1343
7	Order Granting in Part and Denying in Part Petition for Writ of Mandamus	Nevada Supreme Court	01/25/13	1373-1377
23	Order Granting Nevada Department of Taxation's Motion for Costs	First Judicial District Court	10/15/14	4190-4194
3	Order Granting Nevada Legislature's Motion to Intervene	First Judicial District Court	08/30/12	648-650
7	Order on Defendant's Motion for Extensions of Time to File Answer	First Judicial District Court	11/13/12	1351-1353
7	Order Pursuant to Writ of Mandamus	First Judicial District Court	02/22/13	1390-1392
21	Order Vacating Trial	First Judicial District Court	09/03/14	3773-3775
23	Plaintiff's Motion to Strike, or Alternatively, Motion to Retax Costs	City of Fernley	10/14/14	4178-4189
21	Plaintiff's Objections to Nevada Legislature's Proposed Order and Request to Submit Proposed Order and Judgment	City of Fernley	10/02/14	3846-3862
7	Pretrial Order	First Judicial District Court	10/10/13	1393-1399
7	Reply Concerning Joinder in Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	Nevada Legislature	05/27/14	1438-1450
7	Reply in Support of Joinder in Motion to Dismiss	Nevada Legislature	10/08/12	1317-1340
3	Reply in Support of Motion to Intervene	Nevada Legislature	08/24/12	626-635
21	Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant Nevada Legislature	City of Fernley	07/25/14	3709-3746

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20	Reply in Support of Plaintiff's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order as to Defendant's Nevada Department of Taxation and Nevada Treasurer; Plaintiff's Opposition to Countermotion for Order Dismissing Nevada Department of Taxation	City of Fernley	07/25/14	3641-3673
20	Reply in Support of Plaintiff's Motion for Summary Judgment Against Defendant Nevada Legislature	City of Fernley	07/25/14	3606-3640
21	Reply to Opposition to Countermotion for Order Dismissing Nevada Department of Taxation	State of Nevada/Dept Taxation	08/01/14	3769-3772
3	Reply to Opposition to Motion to Dismiss	State of Nevada/Dept Tax/ Treasurer	08/27/12	636-647
20	Reply to Plaintiff's Opposition to Nevada Department of Taxation and Nevada Treasurer's Renewal of Motion to Dismiss	State of Nevada/Dept Taxation	07/25/14	3583-3605
7	Response to Nevada Department of Taxation	City of Fernley	05/16/14	1424-1432
7	Second Stipulation and Order Regarding Change of Briefing Schedule	Parties/First Judicial District Court	03/17/14	1406-1409
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7	Stipulation and Order Regarding Change of Briefing Schedule and Plaintiff's Response to Defendant's Motion to Strike Plaintiff's Jury Demand	Parties/First Judicial District Court	02/19/14	1403-1405
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3	Stipulation and Order Regarding Joinder to Motion to Dismiss	Parties/First Judicial District Court	09/18/12	658-661
23	Transcript of Hearing	Court Reporter	01/07/15	4213-4267
7	Writ of Mandamus	Nevada Supreme Court	01/25/13	1371-1372

CTX Distributions for Nevada Cities
Public Safety Costs for Nevada Cities

Fiscal Year 2011

CITIES	TOTAL CONSOLIDATED TAX DISTRIBUTION FY11 (1)	GENERAL FUND PUBLIC SAFETY COSTS PER FY11 AUDITS
Fallon	1,409,663.87	4,740,982.00
Boulder City	7,935,322.94	8,511,558.00
Henderson	73,965,376.00	111,039,062.00
Las Vegas	207,962,166.62	310,409,067.00
Mesquite	7,046,689.38	8,210,763.00
North Las Vegas	36,538,628.71	96,588,477.00
Carlin	1,531,324.79	676,995.00
Elko	11,015,988.74	8,294,481.00
Wells	994,753.78	406,090.00
West Wendover	2,275,011.27	2,635,718.00
Winnemucca	3,552,393.45	2,766,684.00
Caliente	143,741.47	73,171.00
Fernley	143,143.34	-
Yerington	371,466.83	788,522.00
Lovelock	376,139.07	627,771.00
Reno	39,231,754.06	108,124,303.00
Sparks	16,725,697.33	34,986,439.00
Ely	1,142,528.58	1,034,209.00

(1) Amounts taken from Taxation website, Publications/Annual Taxable Sales Statistics/Consolidated Tax Distribution 2011/Excel Workbook.

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA, ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, Inclusive,

Defendants.

Case No.: 12 OC 00168 1B

Dept. No.: I

AFFIRMATION
Pursuant to NRS 239B.030/603A.040
(Initial Appearance)

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

. . . .

. . . .

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include publicly available information that is lawfully made available to the general public.

(Your signature) Andrea Nichols (Date) Aug. 3, 2012

The purpose of this initial affirmation is to ensure that each person who initiates a case, or upon first appearing in a case, acknowledges their understanding that no further affirmations are necessary unless a pleading which is filed contains personal information.

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Plaintiff, v. STATE OF NEVADA, ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, Inclusive, Defendants.	**Case No.: 12 OC 00168 1B** **Dept. No.: I** **NOTICE OF NON-OPPOSITION TO LEGISLATURE'S MOTION TO INTERVENE**

Defendants, State of Nevada, ex rel. its Department of Taxation and Kate Marshall, in her official capacity as Treasurer of the State of Nevada, by and through counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, Gina Session, Chief Deputy Attorney General, and Andrea Nichols, Senior Deputy Attorney General, hereby notify this

. . . .

. . . .

. . . .

Court that they do not oppose Legislature's Motion to Intervene filed herein on August 3, 2012.

DATED this 6th day of August, 2012.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 6th day of August, 2012, I served a copy of the foregoing **NOTICE OF NON-OPPOSITION TO LEGISLATURE'S MOTION TO INTERVENE** by mailing a true copy, postage prepaid, to:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

vs.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive,

Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

ORIGINAL

NEVADA LEGISLATURE'S
JOINDER IN MOTION TO DISMISS

JOINDER IN MOTION TO DISMISS

Proposed Intervenor-Defendant, the Legislature of the State of Nevada (Legislature), by and through its counsel, the Legal Division of the Legislative Counsel Bureau (LCB) under NRS 218F.720, hereby files this Joinder in the Motion to Dismiss filed by the Attorney General's Office on August 3, 2012, on behalf of the Defendants, the State of Nevada, the Department of Taxation, and the State Treasurer acting in her official capacity. The Legislature is filing this Joinder as a proposed Intervenor-Defendant or, alternatively, as an amicus curiae. See PEST Comm. v. Miller, 648 F. Supp. 2d 1202, 1214 (D. Nev. 2009) (treating responsive documents filed by proposed intervenor-defendant "as the equivalent of an amicus brief."). In joining the Motion to Dismiss, the Legislature is asking the Court for an order dismissing, with prejudice under NRCP 12(b)(5), all causes of action and claims alleged in the Complaint filed by the Plaintiff on June 6, 2012. This Joinder is made and based upon the following Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments that the Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of the facts and case.

A. Parties and claims.

On June 6, 2012, Plaintiff City of Fernley (Fernley), which is located in Lyon County, Nevada, filed a Complaint seeking money damages and declaratory and injunctive relief against the State of Nevada, the Department of Taxation, and the State Treasurer acting in her official capacity (collectively the State Defendants). Fernley challenges the constitutionality of Nevada's system of allocating certain statewide tax revenues which are deposited and consolidated in the Local Government Tax Distribution Account and distributed to Nevada's local governmental entities under NRS 360.600-360.740. The system is administered by the Department of Taxation and the State Treasurer, and it is commonly referred to as the consolidated tax system or the C-Tax system.

In its Complaint, Fernley pleads federal constitutional claims and state constitutional claims. In its federal constitutional claims, Fernley alleges that the C-Tax system violates the Equal Protection Clause of the Fourteenth Amendment because the system results in Fernley receiving distributions that are substantially less than the amounts received by other comparably populated and similarly situated local governmental entities. (Compl. ¶¶ 20-27.) Fernley also alleges that the C-Tax system violates the Due Process Clause of the Fourteenth Amendment because the system results in Fernley receiving distributions that are substantially less than the amounts received by other local governmental entities and the system provides no process by which Fernley can obtain a meaningful and effective adjustment of the tax distributions it receives under the system. (Compl. ¶¶ 50-57.)

In its state constitutional claims, Fernley alleges that the C-Tax system violates the Separation-of-Powers Clause of Article 3, §1 of the Nevada Constitution because the system is set up so that the Legislature's authority over the system is abdicated to and exercised by the executive branch of state government which administers the system. (Compl. ¶¶ 28-36.) Fernley also alleges that the C-Tax system violates Article 4, §20 of the Nevada Constitution because the system operates as an impermissible local or special law for the assessment and collection of taxes for state, county, and township purposes. (Compl. ¶¶ 37-43.) In particular, Fernley alleges that the C-Tax system operates as an impermissible local or special law with respect to Fernley because it treats Fernley significantly differently for tax collection and distribution purposes from other local governmental entities. Id. Finally, Fernley alleges that the C-Tax system violates Article 4, §21 of the Nevada Constitution because the system operates in a non-general and non-uniform fashion by treating Fernley significantly differently from other local governmental entities. (Compl. ¶¶ 44-49.)

Based on its constitutional claims, Fernley asks for a declaration that the C-Tax system is unconstitutional and the issuance of an injunction enjoining the State from making distributions under the system. (Compl. at 10-11.) Fernley also asks for money damages in an amount to be proven at trial.

Id. Because Fernley's claims are directed at the validity of the C-Tax system, it is necessary to provide an overview of that system.

B. Overview of the C-Tax system.

In 1995, the Legislature created an interim committee to study Nevada's laws governing the distribution of certain statewide tax revenues to local governmental entities. Senate Concurrent Resolution No. 40, 1995 Nev. Stat. at 3034-36. The Legislature authorized the interim study because it found that the existing laws relating to the distribution of tax revenue were inadequate to meet the demands for new and expanded services placed on local governmental entities by Nevada's rapid population and economic growth. Id. Based on its study, the interim committee recommended consolidating six statewide tax revenue sources into a single account and establishing base amounts that would be distributed from the account to local governmental entities. LCB Bulletin No. 97-5 (Nev. LCB Research Library, Jan. 1997) (Leg. Ex. 1).[1] The interim committee also recommended establishing appropriate adjustments to the base amounts when public services provided by local governmental entities are taken over by other entities or are eliminated. Id. The interim committee also recommended establishing the number and type of public services that a new entity must provide in order to participate in the distribution of revenue from the account. Id.

In 1997, based on the results of the interim study, the Legislature enacted Senate Bill No. 254 (SB254), which created the C-Tax system codified in NRS 360.600-360.740. 1997 Nev. Stat., ch. 660, at 3278-3304. The Legislature's intent in enacting SB254 was to rectify problems with the prior formula of revenue distribution to local governments which did not follow the growth of population and the resulting greater demand for services. Legislative History of SB254, 69th Leg. (Nev. LCB Research

[1] Filed as Legislature's Exhibit 1 and also available at: http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/1997/Bulletin97-05.pdf.

Library 1997) (Leg. Ex. 2).[2] The prior formula no longer worked because "with moneys not going to the growth areas, it was very difficult for local governments to be able to provide the increased demands of service." Id. at 127. Indeed, the prior formula "had no relationship to the service-level needs within the community." Id. at 45.

Thus, the purpose of SB254 was to eliminate the prior formula of revenue distribution that did not relate to providing services. The new formula in SB254 was based on the necessity of local governments having "to provide a level of service for the population groups they support." Id. at 96. The new formula in SB254 was proposed because "[i]n order for a local government to provide adequate service levels to its citizens, the funding levels must keep commensurate with the costs." Id. at 126. The new formula in SB254 was intended to ensure that "service levels can match the demands of Nevada's citizens." Id. at 127.

In addition, the new formula in SB254 was intended to decrease the competition among local governments for tax revenue. Under the prior formula, if a county had one city, the county and the city shared the revenue, but if a county had two cities, the cities shared the revenue and the county received none. Id. at 127. While the prior formula encouraged cities to be formed in order to receive greater revenue for that locality, SB254 ensured that when a new city is formed, it is not "based upon how much money the new entity will be receiving but upon the service level needs of its citizens." Id. at 127. Thus, SB254 was enacted based on "the idea of distributing governmental revenues to governments performing governmental functions." Id. at 50.

Through the enactment of SB254, the Executive Director of the Department of Taxation was given the duty to administer the C-Tax system and the tax revenues deposited in the Local Government Tax

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[2] Filed as Legislature's Exhibit 2 and also available at: http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB254,1997pt1.pdf & http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB254,1997pt2.pdf;

Distribution Account (Account).[3] NRS 360.660. The proceeds from the following six statewide tax revenue sources are deposited in the Account: (1) the liquor tax—NRS 369.173; (2) the cigarette tax—NRS 370.260; (3) the real property transfer tax—NRS 375.070; (4) the basic city-county relief tax—NRS 377.055; (5) the supplemental city-county relief tax—NRS 377.057; and (6) the basic governmental services tax—NRS 482.181.

The money in the Account is distributed to local governmental entities under a two-tier system. Under the first-tier, a certain portion from each revenue source is allocated to each county according to specific statutory formulas and credited to the county's subaccount. The first-tier revenues in the county's subaccount are then distributed to the county and the cities, towns, enterprise districts[4] and special districts[5] in the county that are eligible for a second-tier distribution.

To be eligible for a second-tier distribution, the entity must be an enterprise district, or it must be a county, city, town or special district that received "before July 1, 1998, any portion of the proceeds of a tax which is included in the Account." NRS 360.670. In addition, a county, city, town or special district is also eligible for a second-tier distribution if it was created after July 1, 1998, and it provides police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks and recreation. NRS 360.740.

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[3] In 1997, the Account was enacted as the Local Government Tax Distribution Fund in the State Treasury. 1997 Nev. Stat., ch. 660, § 8, at 3278. In 1999, it was changed to the Local Government Tax Distribution Account in the Intergovernmental Fund (NRS 353.254) in the State Treasury. 1999 Nev. Stat., ch. 8, § 10, at 10.

[4] Enterprise districts are local governmental entities which are not counties, cities or towns and which are determined to be enterprise districts by the Executive Director based on the criteria in NRS 360.620 and 360.710. Examples of enterprise districts include certain general improvement districts (GIDs) and certain water, sewer, sanitation and television districts.

[5] Special districts are local governmental entities which are not counties, cities, towns or enterprise districts. NRS 360.650. Examples of special districts include certain hospital, library, fire-protection and mosquito-abatement districts.

The second-tier distributions in each county have two components—base amounts calculated under NRS 360.680 and excess amounts calculated under NRS 360.690. The base amounts for the enterprise districts in the county are distributed before any base amounts are distributed to the county and the cities, towns and special districts in the county. NRS 360.680. If there is sufficient money remaining in the county's subaccount after the enterprise districts receive their base amounts, the county and the cities, towns and special districts in the county are entitled to receive their base amounts. NRS 360.690. However, if there is not sufficient money remaining in the county's subaccount to distribute the full base amounts to the county and the cities, towns and special districts in the county, their base amounts are prorated in proportionate percentages. Id.

After distribution of all base amounts, if there is any excess money remaining in the county's subaccount, the county and the cities, towns and special districts in the county are entitled to receive distributions of excess amounts, but the enterprise districts are not entitled to receive such distributions. NRS 360.690. If excess amounts are distributed, the particular amount received by each entity is calculated using statutory formulas that take into account changes in population or changes in the assessed valuation of taxable property, or changes in both. Id. Because the statutory formulas used to calculate excess amounts involve varying factors, the excess amounts ultimately distributed to the county and the cities, towns and special districts in the county are significantly impacted by the specific population and property tax conditions attributable to each such entity.

When the C-Tax system was enacted in 1997, Fernley was an unincorporated town that was eligible for a second-tier distribution. To facilitate Nevada's transition to the new C-Tax system, the Legislature included transitory provisions in sections 35-36 of SB254 which initially took precedence over NRS 360.600-360.740. 1997 Nev. Stat., ch. 660, §§35-36, at 3301-04. Under section 35 of SB254, Fernley's initial year of distribution was the fiscal year ending on June 30, 1999, and the base amount for Fernley's initial year of distribution was calculated using the formula in that section. Id. §35, at

3301-02. After SB254's transitory provisions expired, the base amount of Fernley's distribution has been calculated using the formula in NRS 360.680. Under that formula, Fernley's base amount for each fiscal year is equal to the amount allocated to Fernley for the preceding fiscal year, minus any excess amount allocated to Fernley under NRS 360.690, multiplied by 1 plus the percentage change in the Consumer Price Index (All Items) for the immediately preceding calendar year. NRS 360.680.

In 2001, Fernley incorporated as a city under NRS Chapter 266, Nevada's general law for municipal incorporation.[6] Unlike many other Nevada cities, Fernley does not provide police or fire-protection services. Instead, police services are provided by Lyon County, and fire-protection services are provided by the North Lyon County Fire Protection District.

When Fernley incorporated in 2001, it knew that its C-Tax distribution could be increased because of incorporation only if it provided police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks and recreation. NRS 360.740. Because Fernley did not provide the requisite services, it also knew that after incorporation in 2001, its C-Tax distribution would continue to be calculated and adjusted using its original base amount under section 35-36 of SB254 and the statutory formulas in NRS 360.680 and 360.690, unless it began to provide the requisite services or assumed the functions of another local governmental entity. NRS 360.740; NRS 354.598747.

Fernley's C-Tax distribution can also be increased through cooperative agreements with the county or other cities, towns or special districts in the county. NRS 360.730. In such agreements, the parties may establish "an alternative formula for the distribution of the taxes included in the Account to the local governments or special districts which are parties to the agreement." Id. Based on the

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[6] The Nevada Constitution allows the Legislature to provide for the organization of cities through general laws for municipal incorporation. Nev. Const. art. 8, § 8; State ex rel. Williams v. Dist. Ct., 30 Nev. 225, 227-28 (1908). It also allows the Legislature to create cities through special acts. Nev. Const. art. 8, § 1; State ex rel. Rosenstock v. Swift, 11 Nev. 128, 142-45 (1876); W. Realty v. City of Reno, 63 Nev. 330, 350-51 (1946).

allegations in the Complaint, it does not appear that Fernley has entered into any such cooperative agreements.

II. Argument.

Part 1—Standards for granting motion to dismiss.

A challenge to the constitutionality of a statute presents a question of law which "can be resolved through the vehicle of a motion to dismiss." Nev. Power v. Haggerty, 115 Nev. 353, 358 (1999); Nevadans for Nev. v. Beers, 122 Nev. 930, 939 (2006). When a party files a motion to dismiss, the Court should grant the motion if, after viewing all factual allegations in the complaint as true and drawing all inferences in the plaintiff's favor, it appears beyond a doubt that the plaintiff could prove no set of facts which would entitle it to relief. NRCP 12(b)(5); Buzz Stew v. N. Las Vegas, 124 Nev. 224, 228 (2008). Under that standard, the moving party is entitled to dismissal "where the allegations are insufficient to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408 (2002), *overruled in part on other grounds by* Buzz Stew, 124 Nev. at 228 n.6.

The moving party is also entitled to dismissal when a claim against the party is barred by an affirmative defense. Kellar v. Snowden, 87 Nev. 488, 491-92 (1971). An affirmative defense is a legal argument or assertion of fact that, if true, prohibits prosecution of the claim against the party even if all allegations in the complaint are true. Douglas Disposal v. Wee Haul, 123 Nev. 552, 557-58 (2007); Clark County Sch. Dist. v. Richardson Constr., 123 Nev. 382, 392-93 (2007). Such affirmative defenses include the statute of limitations, the equitable doctrine of laches and any type of immunity or privilege. NRCP 8(c); Kellar, 87 Nev. at 491-92; Hampe, 118 Nev. at 408-09; Hagblom v. State Dir. Mtr. Vehs., 93 Nev. 599, 601-04 (1977). Thus, if the moving party establishes that a claim is barred by an affirmative defense, the party is entitled to dismissal of the claim as a matter of law. Id.

In deciding a motion to dismiss, the Court generally may not consider materials outside the pleadings. Breliant v. Preferred Equities Corp., 109 Nev. 842, 847 (1993). However, this rule is not

absolute, and the Court has the authority to consider materials outside the pleadings that are properly subject to judicial notice, such as matters of public record. Id.; Martinez v. Johnson, 61 Nev. 125, 129 (1941) (noting that courts are bound to take judicial notice of a statute, even if the statute is not pleaded by the parties); Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009) (noting that courts generally "take judicial notice of legislative histories, which are public records."). Therefore, in deciding a motion to dismiss, the Court may take judicial notice of public records without converting the motion to dismiss into a motion for summary judgment. Nevada v. Burford, 708 F. Supp. 289, 292 (D. Nev. 1989).

Part 2—Fernley's claims for money damages are barred by sovereign immunity.

Fernley prays for money damages on its federal and state constitutional claims. (Compl. at 10-11.) Fernley's prayer for money damages must be dismissed as a matter of law because the State Defendants are absolutely immune from liability for money damages under federal and state law.

A. Federal law.

To bring a cause of action for a federal constitutional violation, a plaintiff must plead a civil rights claim under 42 U.S.C. §1983 (section 1983). Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001) ("a litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. §1983."); Martinez v. Los Angeles, 141 F.3d 1373, 1382 (9th Cir. 1998); Azul-Pacifico, Inc. v. Los Angeles, 973 F.2d 704, 705 (9th Cir. 1992). In this case, although Fernley alleges federal constitutional violations, Fernley does not plead any civil rights claims under section 1983. As a general rule, when a plaintiff alleges federal constitutional violations but fails to plead civil rights claims under section 1983, the court will nevertheless "construe [the plaintiff's] allegations under the umbrella of §1983." Bank of Lake Tahoe v. Bank of Am., 318 F.3d 914, 917 (9th Cir. 2003). Consequently, regardless of Fernley's inadequate pleading, its alleged federal constitutional violations must be construed as civil rights claims under section 1983.

Civil rights claims under section 1983 "must meet federal standards even if brought in state court." Madera v. SIIS, 114 Nev. 253, 259 (1998); Will v. Mich. Dep't State Police, 491 U.S. 58, 66 (1989). Under section 1983, the state, its agencies, and its officials acting in their official capacities are absolutely immune from liability for money damages because "neither states nor their officials acting in their official capacities are 'persons' under 42 U.S.C. §1983 and therefore neither may be sued in state courts [for money damages] under the federal civil rights statutes." N. Nev. Ass'n Injured Workers v. SIIS, 107 Nev. 108, 114 (1991) (citing Will, 491 U.S. at 71); State v. Dist. Ct., 118 Nev. 140, 153 (2002); Cuzze v. Univ. Sys., 123 Nev. 598, 605 (2007). Therefore, when a plaintiff's complaint alleges federal constitutional violations and asks for money damages from the state, its agencies, and its officials acting in their official capacities, "the complaint fails to state an actionable claim." N. Nev. Ass'n Injured Workers, 107 Nev. at 114.[7]

In this case, Fernley's Complaint alleges federal constitutional violations and asks for money damages from the State of Nevada, the Department of Taxation, and the State Treasurer acting in her official capacity. Because the State Defendants are absolutely immune from liability for money damages under section 1983, Fernley's prayer for money damages on its federal constitutional claims must be dismissed as a matter of law.

B. State law.

A plaintiff may bring a state-law claim for money damages against the state, its agencies, and its officials acting in their official capacities only to the extent authorized by Nevada's conditional waiver of its sovereign immunity. NRS 41.031 et seq.; Hagblom v. State Dir. Mtr. Vehs., 93 Nev. 599, 601-04 (1977). Nevada's conditional waiver of its sovereign immunity is expressly limited by NRS 41.032, which provides in relevant part:

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[7] Although section 1983 bars claims for money damages against the state, its agencies, and its officials acting in their official capacities, it does not bar claims for declaratory or injunctive relief against state officials acting in their official capacities. N. Nev. Ass'n Injured Workers, 107 Nev. at 115-16 (citing Will, 491 U.S. at 71 n.10).

> [N]o action may be brought under NRS 41.031 or against an immune contractor or an officer or employee of the State or any of its agencies or political subdivisions which is:
>
> 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the statute or regulation has not been declared invalid by a court of competent jurisdiction; or
>
> 2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused.

Under NRS 41.032(1), the state, its agencies, and its officials acting in their official capacities are absolutely immune from liability for money damages based on any acts or omissions in their execution and administration of statutory provisions which have not been declared invalid by a court of competent jurisdiction. Hagblom, 93 Nev. at 603-04. Additionally, under NRS 41.032(2), the state, its agencies, and its officials acting in their official capacities are absolutely immune from liability for money damages based on the performance of official duties which involve an element of official discretion or judgment and are grounded in the creation or execution of social, economic or political policy. Martinez v. Maruszczak, 123 Nev. 433, 445-47 (2007); Scott v. Dep't Commerce, 104 Nev. 580, 583-86 (1988). The reason for providing absolute immunity under such circumstances is to protect the policy-making functions of the political branches from "judicial 'second guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." Martinez, 123 Nev. at 446 (quoting United States v. Varig Airlines, 467 U.S. 797, 814 (1984)).

In this case, Fernley alleges in its state constitutional claims that the State of Nevada, the Department of Taxation, and the State Treasurer acting in her official capacity violated the Nevada Constitution in their execution and administration of the C-Tax system under NRS 360.600-360.740. Because those statutory provisions have not been declared invalid by a court of competent jurisdiction, the State Defendants enjoy absolute immunity from liability for money damages under NRS 41.032(1) based on any acts or omissions in their execution and administration of the C-Tax system. Furthermore,

because their execution and administration of the C-Tax system also involves an element of official discretion or judgment and is grounded in the creation or execution of social, economic or political policy, the State Defendants also enjoy absolute immunity from liability for money damages under NRS 41.032(2). Therefore, because the State Defendants are absolutely immune from liability for money damages under NRS 41.032, Fernley's prayer for money damages on its state constitutional claims must be dismissed as a matter of law.

Part 3—Fernley's claims are time-barred by the statute of limitations.

It is well established that the statute of limitations applies to constitutional claims and that "[a] constitutional claim can become time-barred just as any other claim can." Block v. North Dakota ex rel. Bd. of Univ. & School Lands, 461 U.S. 273, 292 (1983); United States v. Clintwood Elkhorn Mining, 553 U.S. 1, 9 (2008). Because Fernley failed to bring its federal and state constitutional claims within the applicable statute of limitations, its claims are time-barred as a matter of law.

A. Federal law.

The statute of limitations for federal constitutional claims under section 1983 is calculated by using the statute of limitations for personal injury actions in the state where the claims arose. Wilson v. Garcia, 471 U.S. 261, 279-80 (1985); Owens v. Okure, 488 U.S. 235, 236 (1989). In Nevada, based on the statute of limitations for personal injury actions in NRS 11.190(4)(e), the statute of limitations for federal constitutional claims under section 1983 is two years. Day v. Zubel, 112 Nev. 972, 977 (1996); Perez v. Seevers, 869 F.2d 425, 426 (9th Cir. 1989).

The statute of limitations for federal constitutional claims under section 1983 applies to both legal claims for monetary damages and equitable claims for declaratory and injunctive relief because "where legal and equitable claims coexist, equitable remedies will be withheld if an applicable statute of limitations bars the concurrent legal remedy." Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 688 (9th Cir. 1993) (quoting Gilbert v. City of Cambridge, 932 F.2d 51, 57 (1st Cir. 1991)); see also Cope v.

Anderson, 331 U.S. 461, 464 (1947) ("equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy."); Russell v. Todd, 309 U.S. 280, 289 (1940) ("equity will withhold its remedy if the legal right is barred by the local statute of limitations.").

The statute of limitations for federal constitutional claims under section 1983 begins to run when the plaintiff has a complete and present cause of action and can file suit to obtain relief. Wallace v. Kato, 549 U.S. 384, 388 (2007). This occurs when the plaintiff knows or has reason to know of the alleged events that form the basis of the cause of action. McCoy v. San Francisco, 14 F.3d 28, 29 (9th Cir. 1994). Courts apply this rule of accrual strictly, even if the alleged constitutional violation creates lasting effects that continue to adversely impact the plaintiff long after the violation has occurred. Id. at 30 ("statute of limitations period is triggered by the decision constituting the discriminatory act and not by the consequences of that act."); Davis v. La. State Univ., 876 F.2d 412, 413 (5th Cir. 1989). Thus, continuing impact from past violations does not extend the statute of limitations. McDougal v. County of Imperial, 942 F.2d 668, 674-75 (9th Cir. 1991).

In this case, Fernley alleges that "[n]o meaningful adjustments were made to Fernley's C-Tax distribution after its incorporation in 2001." (Compl. ¶ 9.) When Fernley incorporated in 2001, it knew that its C-Tax distribution could be increased because of incorporation only if it provided police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks and recreation. NRS 360.740. Because Fernley did not provide the requisite services, it also knew that after incorporation in 2001, its C-Tax distribution would continue to be calculated and adjusted using its original base amount under section 35-36 of SB254 and the statutory formulas in NRS 360.680 and 360.690, unless it began to provide the requisite services or assumed the functions of another local governmental entity. NRS 360.740; NRS 354.598747.

Thus, even if it is true that the C-Tax system results in Fernley receiving distributions that are substantially less than what is received by other local governmental entities and provides no process by

which Fernley can obtain a meaningful and effective adjustment of its distributions, those circumstances have existed since Fernley incorporated in 2001. Consequently, the events that form the basis of Fernley's equal protection and due process claims occurred when Fernley incorporated in 2001, and that is when Fernley's federal constitutional claims accrued. At that time, Fernley had a complete and present cause of action and could have filed suit to obtain relief. Even though the events which triggered the statute of limitations in 2001 have had lasting effects that continue to impact Fernley, such a continuing impact does not extend the statute of limitations. Therefore, because Fernley's federal constitutional claims accrued in 2001, the two-year statute of limitations expired in 2003, and Fernley's federal constitutional claims must be dismissed because they are time-barred as a matter of law.

B. State law.

In Nevada, the statute of limitations applies to all causes of action, legal and equitable. State v. Yellow Jacket Mining, 14 Nev. 220, 230 (1879). The Nevada Supreme Court has not determined which limitations period applies to state constitutional claims. If the Nevada Supreme Court were to follow the lead of the United States Supreme Court, the two-year statute of limitations in NRS 11.190(4)(e) would apply. But if that is not the applicable statute of limitations, then the general four-year statute of limitations in NRS 11.220 would govern. NRS 11.220 ("An action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued."); Yellow Jacket Mining, 14 Nev. at 230 ("if the cause of action is not particularly specified elsewhere in the statute, it is embraced in section 1033 [presently codified in NRS 11.220], and the action must be commenced within four years after the cause of action accrued."). Under either limitations period, Fernley's state constitutional claims are time-barred as a matter of law.

In Nevada, the statute of limitations begins to run "from the day the cause of action accrued." State Dep't Transp. v. PERS, 120 Nev. 19, 21-22 (2004) (quoting Clark v. Robison, 113 Nev. 949, 951 (1997)). In the typical case, "a cause of action does not accrue, and the statute does not begin to run

until a litigant discovers, or reasonably should have discovered, facts giving rise to the action." Beazer Homes v. Dist. Ct., 120 Nev. 575, 585 (2004). Litigants are expected to exercise reasonable diligence in discovering the facts giving rise to the cause of action and "may not close their eyes to means of information reasonably accessible to them and must in good faith apply their attention to those particulars within their reach." Siragusa v. Brown, 114 Nev. 1384, 1394 (1998) (quoting Spitler v. Dean, 436 N.W.2d 308, 311 (Wis. 1989)). If a litigant, through the exercise of reasonable diligence or inquiry, could have discovered the facts giving rise to the cause of action earlier than the date on which the litigant actually discovered those facts, the limitations period begins to run from the earlier date. Id. at 1393-94; Sierra Pac. Power v. Nye, 80 Nev. 88, 94-95 (1964).

Furthermore, when the facts giving rise to the cause of action are a matter of public record, the general rule is that the limitations period begins to run immediately because the courts will presume that "[t]he public record gave notice sufficient to start the statute of limitations running." Cumming v. San Bernardino Redev. Agency, 125 Cal. Rptr. 2d 42, 46 (Cal. Ct. App. 2002). Under this rule, the public record provides constructive or presumed notice or knowledge that is considered to be equivalent to actual notice or knowledge. Id. Accordingly, "[w]hen a plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation (such as public records or corporation books), the statute applicable to the cause of action commences to run." Community Cause v. Boatwright, 177 Cal. Rptr. 657, 665 (Cal. Ct. App. 1981).

In its separation-of-powers claims, Fernley alleges that the C-Tax system is set up so that the Legislature's authority over the system is abdicated to and exercised by the executive branch of state government which administers the system. (Compl. ¶ 32.) Even if Fernley's allegations are true, it must be presumed that when Fernley incorporated in 2001, it knew the manner in which the C-Tax system is set up and the extent of the Legislature's delegation of authority over the C-Tax system to the executive

branch because the C-Tax statutes are part of the law of Nevada and are a matter of public knowledge. See Sengel v. IGT, 116 Nev. 565, 572-73 (2000); Smith v. State, 38 Nev. 477, 481 (1915) ("When the statute was passed . . . such statute became a part of the law of the state. Every one is presumed to know the law, and this presumption is not even rebuttable."). Therefore, because Fernley knew of the circumstances giving rise to its separation-of-powers claims from at least 2001 when it incorporated, both the two-year and four-year statute of limitations have expired, and Fernley's separation-of-powers claims must be dismissed because they are time-barred as a matter of law.

In its claims under Article 4, §§20-21 of the Nevada Constitution, Fernley alleges that the C-Tax system operates as an impermissible local or special law and in a non-general and non-uniform fashion by treating Fernley significantly differently from other local governmental entities for tax distribution purposes. (Compl. ¶¶ 40, 46.) Even if Fernley's allegations are true, the C-Tax system has been operating in that manner from at least 2001 when Fernley incorporated. Because distribution of tax revenues under the C-Tax system is a matter of public record, it must be presumed that when Fernley incorporated in 2001, it knew the manner in which the C-Tax system operated and that it could be treated differently from other local governmental entities for tax distribution purposes. Therefore, because Fernley knew of the circumstances giving rise to its Article 4, §§20-21 claims from at least 2001 when it incorporated, both the two-year and four-year statute of limitations have expired, and Fernley's Article 4, §§20-21 claims must be dismissed because they are time-barred as a matter of law.

Part 4—Fernley's claims are time-barred by laches.

Under both federal and state law, constitutional claims may be time-barred by the equitable doctrine of laches when there has been an unreasonable or inexcusable delay in bringing the claims and such delay has worked to the disadvantage or prejudice of others or has resulted in a change of circumstances which would make the granting of relief inequitable. Miller v. Burk, 124 Nev. 579, 598-99 (2008); Southside Fair Hous. Comm. v. New York, 928 F.2d 1336, 1354 (2d Cir. 1991) ("Laches can

bar constitutional claims."); Soules v. Kauaians Campaign Comm., 849 F.2d 1176, 1180-82 (9th Cir. 1988) (applying laches to bar equal protection claims); Envtl. Def. Fund v. Alexander, 614 F.2d 474, 480 (5th Cir. 1980) ("The defense [of laches] is not restricted to cases in which only private law claims are asserted; it is also applicable to complaints based on constitutional claims and those based on alleged violation of separation of powers."); Partee v. Cook County Sheriff's Dep't, 863 F. Supp. 778, 783 (N.D. Ill. 1994) ("a §1983 complaint that is filed within the limitations period may still be subject to dismissal for laches.").

The doctrine of laches is based on the maxim that equity aids the vigilant, not those who sleep on their rights. Am. Int'l Group v. Am. Int'l Bank, 926 F.2d 829, 835 (9th Cir. 1991) ("The fundamental premise of laches is that those who sleep on their rights surrender them; if you snooze, you lose."). To determine whether a constitutional challenge is barred by laches, courts consider: (1) whether the party inexcusably delayed bringing the challenge and the length of the delay; (2) whether the delay constitutes acquiescence by the party in the validity of the legislation; and (3) whether the delay was prejudicial to others who relied on the validity of the legislation. Burk, 124 Nev. at 598-99; Southside Fair Hous. Comm., 928 F.2d at 1354. The applicability of laches turns upon the particular facts and circumstances of each case. Carson City v. Price, 113 Nev. 409, 412 (1997).

Since at least 2001 when it incorporated, Fernley knew the manner in which the C-Tax system operated and that it was being treated differently from other cities and towns for tax distribution purposes because it did not provide the same type of public services, such as police and fire protection. Nevertheless, Fernley unreasonably and inexcusably delayed bringing its constitutional challenge for eleven years. Fernley's failure to act diligently and timely within that eleven-year period amounts to acquiescence in the validity of the C-Tax system. Moreover, during that eleven-year period, Nevada's other local governmental entities and their citizens have reasonably relied on the validity of the C-Tax system, and they have a reasonable expectation in continuing to receive their allotted distributions under

that system. If the C-Tax system is declared invalid now after such a long period of operation, such a declaration would bring chaos to Nevada's tax distribution system, and it would prejudice those local governmental entities and their citizens who have reasonably relied on the validity of the C-Tax system. Therefore, because consideration of Fernley's federal and state constitutional claims after such an unreasonable and inexcusable eleven-year delay would upset settled expectations, would work to the disadvantage and prejudice of others, and would make the granting of relief inequitable, Fernley's federal and state constitutional claims must be dismissed because they are time-barred by laches.

Part 5—Standard of review for the merits of Fernley's claims.

Even assuming Fernley's federal and state constitutional claims are not barred by sovereign immunity, the statute of limitations and laches, the claims are nevertheless without merit. In reviewing the constitutionality of a statute, the court must presume the statute is constitutional, and "[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of [the] statute, and courts will interfere only when the Constitution is clearly violated." List v. Whisler, 99 Nev. 133, 137 (1983). The presumption places a heavy burden on the challenger to make "a clear showing that the statute is unconstitutional." Id. at 138. As a result, the court must not invalidate a statute on constitutional grounds unless the statute's invalidity appears "beyond a reasonable doubt." Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) ("every statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.").

Furthermore, it is a fundamental rule of constitutional review that "the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature." Anthony v. State, 94 Nev. 337, 341 (1978). Thus, in reviewing the constitutionality of a statute, the court must not be concerned with the wisdom or policy of the legislation because "matters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts." King v. Bd. of Regents, 65 Nev. 533, 542 (1948).

As will be explained next, because Fernley has not met its heavy burden to make a clear showing that the C-Tax system is unconstitutional beyond a reasonable doubt, Fernley's federal and state constitutional claims must be dismissed as a matter of law.

Part 6—Fernley's equal protection and due process claims must be dismissed.

In its first and fifth claims for relief, Fernley alleges that the C-Tax system violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Based on long-standing caselaw, because Fernley is a political subdivision of the State of Nevada, it has no standing to bring federal constitutional claims against the state, its creator, for alleged violations of the Equal Protection or Due Process Clause of the Fourteenth Amendment. Furthermore, even if Fernley had standing to bring such Fourteenth Amendment claims, those claims would have no merit.

A. Fernley has no standing to bring Fourteenth Amendment claims against the state.

It is well established that "a municipal corporation, in this state, is but the creature of the legislature, and derives all its powers, rights and franchises from legislative enactment or statutory implication." State ex rel. Rosenstock v. Swift, 11 Nev. 128, 140 (1876). As a result, Nevada's cities "are mere instrumentalities of the state, for the convenient administration of government." City of Reno v. Stoddard, 40 Nev. 537, 542 (1917).

In numerous cases, both the United States Supreme Court and the Nevada Supreme Court have held that because cities and other political subdivisions are entities created by the state merely for the convenient administration of government, such political subdivisions lack standing to bring Fourteenth Amendment claims against the state, its creator. City of Trenton v. New Jersey, 262 U.S. 182 (1923); City of Pawhuska v. Pawhuska Oil & Gas, 250 U.S. 394 (1919); Hunter v. City of Pittsburgh, 207 U.S. 161 (1907); State ex rel. List v. County of Douglas, 90 Nev. 272, 279-81 (1974); Reno v. County of Washoe, 94 Nev. 327, 329-31 (1978); Boulder City v. State, 106 Nev. 390, 392 (1990). In explaining this doctrine, the High Court has stated that:

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The State, therefore, at its pleasure may modify or withdraw all [municipal] powers, may take without compensation [municipal] property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. . . . In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. . . . and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.

Hunter, 207 U.S. at 178-79.

The doctrine that a political subdivision lacks standing to sue the state is also recognized by the Nevada Supreme Court, which has held that "a political subdivision of the State of Nevada[] may not invoke the proscriptions of the Fourteenth Amendment in opposition to the will of its creator." List, 90 Nev. at 280 (holding that a Nevada county had no standing to bring equal protection and due process claims under the Fourteenth Amendment against the State of Nevada); see also Reno, 94 Nev. at 329-31, and Boulder City, 106 Nev. at 392 (applying the doctrine to Nevada's cities). Thus, because Fernley, as a political subdivision of the State of Nevada, has no standing to bring Fourteenth Amendment claims against the state, Fernley's equal protection and due process claims under the Fourteenth Amendment must be dismissed as a matter of law.

B. Even if Fernley had standing to bring Fourteenth Amendment claims against the state, those claims would have no merit.

Fernley alleges that it has been denied equal protection because it receives, as an incorporated city, C-Tax distributions "that are substantially less than what is received by other, comparably populated and similarly situated Nevada towns and cities." (Compl. ¶ 22.) Fernley also alleges that the C-Tax system is "non-uniform and unequal in its effect upon Fernley as compared to other similarly situated Nevada towns and cities." (Compl. ¶ 23.) In support of its contention that it has been denied due process, Fernley alleges that the C-Tax system "results in Fernley receiving tax revenue distributions that are

substantially less than what is received by other local governments and provides no process by which Fernley can obtain a meaningful and effective adjustment of such tax distributions." (Compl. ¶ 52.)

The Equal Protection Clause provides that a state shall not "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1. "When a party contends that a statute violates its equal protection rights but does not allege the involvement of a suspect class or fundamental right, the statute is constitutional if the classification scheme created by that statute is rationally related to furthering a legitimate state interest." Silver State Elec. v. State, 123 Nev. 80, 84 (2007). Furthermore, when a legislative classification is challenged under the rational basis test, a court "is not limited, when analyzing a rational basis review, to the reasons enunciated for enacting a statute; if any rational basis exists, then a statute does not violate equal protection." Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 520 (2009).

The Due Process Clause provides that a state shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §1. Similar to the level of scrutiny applied for equal protection claims, where a statute does not impinge upon any fundamental constitutional right, the statute will be upheld under the Due Process Clause if the statute is rationally related to a legitimate state interest. Bowers v. Hardwick, 478 U.S. 186, 196 (1986), *overruled on other grounds by* Lawrence v. Texas, 539 U.S. 558, 578 (2003); State v. Dist. Ct., 101 Nev. 658, 661-62 (1985) (holding that where a fundamental right is not involved, "the constitutionality of the statute will be upheld against a Fourteenth Amendment challenge if the law is reasonable, not arbitrary and bears rational relationship to a legitimate state purpose.").

Therefore, under both the Equal Protection and Due Process Clauses, the Legislature's distribution of tax revenues through the C-Tax system must be upheld so long as it is rationally related to a legitimate state interest. The fundamental flaw in Fernley's federal constitutional claims is the mistaken belief that the Equal Protection and Due Process Clauses require uniformity in the distribution of the tax

revenues deposited in the Account. However, based on a long line of cases, "[n]o requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds." Hess v. Mullaney, 213 F.2d 635, 640 (9th Cir. 1954) (citing Gen. Amer. Tank Car Corp. v. Day, 270 U.S. 367, 372 (1926), and Carmichael v. S. Coal Co., 301 U.S. 495, 521 (1937)). Thus, even when tax revenues are distributed unevenly to local governmental entities under a statutory distribution scheme, that scheme must be upheld unless the challenger can prove there is no rational basis for the method of distribution chosen by the legislative body. Ball v. Rapides Parish, 746 F.2d 1049, 1055-63 (5th Cir. 1984).

Consequently, even if it is true that the C-Tax system is "non-uniform and unequal in its effect upon Fernley as compared to other similarly situated Nevada towns and cities," the lack of uniformity in the C-Tax system is insufficient as a matter of law to prove an equal protection or due process claim. The only way for Fernley to prove an equal protection or due process claim is to establish that there is no rational basis for the method of distribution chosen by the Legislature in the C-Tax system. Because Fernley does not even make such an allegation in its equal protection and due process claims, those claims fail as a matter of law.

The United States Supreme Court has considered equal protection and due process claims seeking to prohibit Massachusetts from distributing taxes under a statutory distribution scheme. Dane v. Jackson, 256 U.S. 589, 594-95 (1921). In that case, the claim was made that the state's distribution scheme resulted in the accrual of benefits to taxpayers in some districts but not to taxpayers in other districts. Id. Before the enactment of the tax legislation in question, the various taxing subdivisions of Massachusetts had taxed real estate and both tangible and intangible property within their respective jurisdictions for state and local purposes. Id. at 595. After new legislation was enacted, intangible property was virtually exempted from local taxation and instead subject to state taxation. Id. As a means to reimburse the taxing subdivisions for the loss in revenue incurred by the exemption of

intangible property from local taxation, a statutory distribution formula was implemented. Id. at 595-96. The petitioner, however, asserted that this distribution scheme effectuated a result where certain cities and towns would receive greater distributions than other cities and towns without regard to the amounts taxed on intangible property. Id. at 596. In rejecting the petitioner's claims of equal protection and due process violations, the Court explained:

> [S]ince the system of taxation has not yet been devised which will return precisely the same measure of benefit to each taxpayer or class of taxpayers in proportion to payment made, as will be returned to every other individual or class paying a given tax, it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the States for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the state legislatures . . . and that where, as here, conflict with federal power is not involved, a state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation . . . For other inequalities of burden or other abuses of the state power of taxation, the only security of the citizen must be found in the structure of our Government itself.

Id. at 598-99. These principles have since been applied by both lower federal and state courts alike.

In Ball v. Rapides Parish, the plaintiffs complained that although the Town of Ball was the fastest growing incorporated government in Rapides Parish, Louisiana, the town received no share of revenues generated from a parishwide sales tax even though every other incorporated government in the parish received a share of such revenues. 746 F.2d at 1051-52. Under a state law allowing certain parishes to levy and collect a retail sale and use tax, the governing body of Rapides Parish enacted such a tax and specified the distribution of the tax revenues among the parish, the school board, and each of the nine incorporated governments within the parish. Id. Because the Town of Ball did not incorporate until several years after the parishwide tax and distribution system went into effect, the distribution plan did not account for the newly-incorporated town, and the town did not receive a portion of the parish's tax revenues for over a decade. Id. at 1053. As described by the court, even though the "citizens of Ball have forked over their share of fiscal fixings for 12 years . . . when the annual economic entree is ready

to be served the Town has never had a place at the Parish table." Id. at 1053-54. And the town's attempts to have the Louisiana Legislature grant relief from the tax plan was met with no success. Id. at 1054 n.15.

The plaintiffs brought suit against each of the governmental bodies receiving funds under the distribution plan claiming that the plan violated the due process and equal protection rights of the town's residents. Id. at 1054. The complaint sought the "fair share" of all revenue produced from the parishwide tax since the town's incorporation, the "fair share" of all current and future revenue generated by the tax, injunctive relief barring further collection of the tax until the distribution plan was revised to be constitutional, and other general and equitable relief. Id. In analyzing the claims, the court first determined that the Equal Protection Clause did apply, but that only a rational basis level of scrutiny was applicable because the distribution scheme "does not create a suspect classification nor infringe rights or interests heretofore recognized as constitutionally fundamental." Id. at 1055-60. Turning to whether there was any rational basis for the distribution plan, the court first noted that the judiciary must avoid acting as a "superlegislature to judge the wisdom or desirability of legislative policy determinations made in . . . the local economic sphere." Id. at 1060 (quoting New Orleans v. Dukes, 427 U.S. 297, 303 (1976)). The court also noted the deference given to tax legislation, explaining that:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . The passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.

Id. at 1061 (quoting Regan v. Taxation with Representation, 461 U.S. 540, 547-48 (1983) (quoting Madden v. Kentucky, 309 U.S. 83, 87-88 (1940))).

In examining the "conceivable" purposes behind the distribution plan, the court found that the governing body could have determined that the Town of Ball did not require the tax proceeds as much as the other municipalities, that the governing body could have intended to dissuade the incorporation of another municipality, or that the governing body could have feared that participation of new municipalities in the distribution plan would jeopardize the repayment of bonds. Id. at 1062. Because any of these conceivable purposes was rationally related to a legitimate governmental interest, the court concluded there was no Fourteenth Amendment violations. See also Allied Stores v. Bowers, 358 U.S. 522, 528-29 (1959) (holding that a state need not explicitly declare its purpose for adopting a particular tax distribution scheme so long as any legitimate purpose "reasonably may be conceived."); McInnis v. Shapiro, 293 F. Supp. 327, 328-330 (N.D. Ill. 1968) (holding that a public school financing plan did not violate students' Fourteenth Amendment rights to equal protection and due process even though the distribution formula permitted wide variations in allocations from district to district where there appeared to be legitimate policy reasons for the distribution formula).

Courts have consistently recognized that because the state tax structures are complicated and total equity in the distribution of tax revenues among a state's citizens would be an exceedingly difficult task, the Fourteenth Amendment "imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation . . . To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." McLennan v. Aldredge, 159 S.E.2d 682, 687 (Ga. 1968) (holding that the state legislature has a right to make revenue distributions in recognition of financial, taxable wealth and other differences between city and school systems) (quoting Ohio Oil Co. v. Conway, 281 U.S. 146, 159

(1930)).

Thus, courts have consistently rejected the premise that the Equal Protection and Due Process Clauses require uniformity in the distribution of the tax revenues. See, e.g., Bd. of Comm'rs v. Cooper, 264 S.E.2d 193, 198 (Ga. 1980) (finding no equal protection or due process violation on the basis that some areas of a district or some taxpayers in a district may receive greater benefits under a distribution scheme); Leonardson v. Moon, 451 P.2d 542, 554-55 (Idaho 1969) (upholding distribution scheme implementing a distribution formula on a graduated basis of a portion of the state sales tax fund to counties and other taxing units despite unequal allocations to recipients); McBreairty v. Comm'r Admin. & Fin. Servs., 663 A.2d 50, 54-55 (Me. 1995) (finding no requirement that the state legislature distribute tax revenues equally); McKenney v. Byrne, 412 A.2d 1041, 1045-49 (N.J. 1980) (holding that a legislature's decision to distribute funds created by a state-imposed tax, even if it was imperfect, reflected "legislative judgment in the exercise of its inherent constitutional function. The judiciary should not review the wisdom of such a legislative function."); Beech Mtn. v. County of Watauga, 370 S.E.2d 453, 454-55 (N.C. Ct. App. 1988) (finding no equal protection violation for a county's per capita method of distributing sales and use tax revenue); Douglas Indep. Sch. Dist. v. Bell, 272 N.W.2d 825, 827 (S.D. 1978) (finding no equal protection violation in a revenue distribution plan that did not provide for the distribution of revenue back to districts in an amount proportional to what was paid by those districts).

In this case, Fernley alleges that it does not receive its fair share of C-Tax distributions. But as courts have held time and time again, there is simply no constitutional right under the Equal Protection or Due Process Clauses to an equal receipt of tax revenues distributed by the state. In order to allege an equal protection or due process claim, Fernley needed to plead in its Complaint that there is no rational basis for the method of distribution chosen by the Legislature in the C-Tax system. Because Fernley's Complaint does not contain any allegations to that effect, its equal protection and due process claims

must be dismissed as a matter of law for that reason alone. Furthermore, even if Fernley's Complaint had contained allegations to that effect, its equal protection and due process claims would still fail as a matter of law because there is a rational basis for the method of distribution chosen by the Legislature in the C-Tax system.

The Legislature enacted the C-Tax system based on "the idea of distributing governmental revenues to governments performing governmental functions." Legislative History of SB254, supra, at 50. The state clearly has a legitimate interest in ensuring that more tax revenues are distributed to those local governments which provide more public services, such as police and fire-protection services. Thus, as a matter of economic and fiscal policy, the Legislature could have rationally concluded that those local governments which provide more public services should receive more C-Tax distributions to offset their increased expenditures. Because Fernley does not provide police and fire-protection services, it is not similarly situated to other cities and towns which provide those services, so there is a rational basis for treating Fernley differently under the C-Tax system. That rational basis is sufficient to defeat Fernley's equal protection and due process claims. See Flamingo Paradise, 125 Nev. at 520-22 (holding that businesses with nonrestricted gaming licenses were not similarly situated to businesses with restricted gaming licenses and because these businesses have different impacts on the economy, there was a rational basis for treating them differently).

Furthermore, even if the C-Tax system does not operate "with mathematical nicety or . . . in practice it results in some inequality," it still does not violate the Fourteenth Amendment because "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." U.S. R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 175 (1980) (quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970)). Consequently, "[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does

not offend the Constitution." Id.

All distributions under the C-Tax system are subject to the same statutory formulas that take into account changes in a local government's population and the assessed valuation of taxable property. In adopting the statutory formulas, the Legislature could have reasonably concluded that changes in population and the assessed valuation of taxable property have a direct impact on how much tax revenues a local government needs as part of its operating budget. Even if the statutory formulas chosen by the Legislature are imperfect and do not operate with mathematical nicety or result in some inequality, the Legislature nevertheless had a reasonable basis for choosing the statutory formulas. Therefore, the method of distribution chosen by the Legislature in the C-Tax system does not violate the Fourteenth Amendment, and Fernley's equal protection and due process claims must be dismissed as a matter of law.

Finally, Fernley's allegation that the C-Tax system "provides no process by which Fernley can obtain a meaningful and effective adjustment of such tax distributions" also fails to state a claim for a Fourteenth Amendment violation. (Compl. ¶ 52.) By enacting the C-Tax system, the Legislature used the legislative process to adjust the distribution of tax revenues to local governmental entities. When the Legislature uses the legislative process to adjust legal rights through the passage of legislation, the legislative process "provides all the process that is due." Logan v. Zimmerman Brush Co., 455 U.S. 422, 433 (1982); Bi-Metallic Inv. Co. v. State Bd. of Equal., 239 U.S. 441, 445-46 (1915). Because the inherent checks and balances of the legislative process provide their own procedural safeguards, "the legislative process is sufficient to comport with minimal federal due process requirements." Rea v. Matteucci, 121 F.3d 483, 485 (9th Cir. 1997).

Thus, even assuming that Fernley is entitled to the protections of the Due Process Clause, the legislative process provides all the process that is due. And even though Fernley has been unsuccessful in its efforts in the legislative process to change the C-Tax system, the Due Process Clause does not

entitle Fernley to a favorable result. At most, it entitles Fernley to an opportunity to ask for statutory changes through the legislative process, and Fernley has not been denied that opportunity. Therefore, Fernley's due process claims must be dismissed as a matter of law.

Part 7—Fernley's separation-of-powers claims must be dismissed.

In its second claim for relief, Fernley alleges that the C-Tax system violates the Separation-of-Powers Clause of Article 3, §1 of the Nevada Constitution because the system is set up so that the Legislature's authority over the system is abdicated to and exercised by the executive branch of state government which administers the system. (Compl. ¶¶ 28-36.) Because Fernley is a political subdivision of the State of Nevada, it has no standing to bring separation-of-powers claims against the state. Furthermore, even if Fernley had standing to bring separation-of-powers claims, those claims would have no merit.

A. Fernley has no standing to bring separation-of-powers claims against the state.

It is well established that political subdivisions lack legal capacity and standing to bring claims against the state alleging violations of state constitutional provisions, unless the provisions exist for the protection of political subdivisions of the state, such as municipal home-rule provisions. City of New York v. State, 655 N.E.2d 649, 651-52 (N.Y. 1995). For example, Nevada's political subdivisions lack standing to bring claims against the state for violations of the due process clause of Article 1, §8 of the Nevada Constitution because that provision does not exist for the protection of political subdivisions of the state. Reno v. County of Washoe, 94 Nev. 327, 330 (1978). However, Nevada's political subdivisions have standing to bring claims against the state for violations of Article 4, §§20-21 of the Nevada Constitution because those provisions "exist for the protection of political subdivisions of the State. Their effect is to limit the Legislature, in certain instances, to the enactment of general, rather than special or local, laws." Id. at 332.

The Separation-of-Powers Clause of the Nevada Constitution does not exist for the protection of

political subdivisions of the state. It exists for the protection of *state* government by prohibiting one branch of state government from impinging on the functions of another branch of state government. Nev. Const. art. 3, §1(1); Comm'n on Ethics v. Hardy, 125 Nev. 285, 291-94 (2009); Heller v. Legislature, 120 Nev. 456, 466-72 (2004); Sawyer v. Dooley, 21 Nev. 390, 396 (1893) ("As will be noticed, it is the *state* government as created by the constitution which is divided into departments.") (emphasis added). In interpreting the Separation-of-Powers Clause of the California Constitution of 1849, which was the model for Nevada's Separation-of-Powers Clause, the California Supreme Court has stated that "the Third Article of the Constitution means that the powers of the *State* Government, not the local governments thereafter to be created by the Legislature, shall be divided into three departments." People v. Provines, 34 Cal. 520, 534 (1868). Thus, "it is settled that the separation of powers provision of the constitution, art. 3, § 1, does not apply to local governments as distinguished from departments of the state government." Mariposa County v. Merced Irrig. Dist., 196 P.2d 920, 926 (Cal. 1948).

Because the Separation-of-Powers Clause of the Nevada Constitution does not exist for the protection of political subdivisions of the state, Fernley lacks standing to bring claims against the state alleging violations of that constitutional provision. Therefore, Fernley's separation-of-powers claims must be dismissed as a matter of law.

B. Even if Fernley had standing to bring separation-of-powers claims against the state, those claims would have no merit.

Fernley alleges that "[t]he C-Tax system, which is administered by the executive branch of the state government, is set up so that the legislative authority over the C-Tax system is abdicated to and exercised by the executive branch of state government." (Compl. ¶ 32.) Fernley's allegations fail to state a claim for relief as a matter of law because the Legislature has lawfully delegated administrative and ministerial duties to the Department of Taxation and State Treasurer under the C-Tax system which

they must perform in accordance with clearly defined statutory standards.

The Nevada Supreme Court has recognized that there is no impermissible delegation of legislative authority to an executive branch agency when the agency must work within sufficiently defined statutory standards in exercising its power to give effect to a statute. State v. Shaughnessy, 47 Nev. 129, 135 (1923). As explained by the court:

> [T]he completeness of a statute when it leaves the hands of the legislature is one of the strongest proofs that it is not a delegation of legislative power. In the present act the legislature has plainly declared the policy of the law, and clearly indicated the legal principles which are to control the commissioners in the exercise of the power conferred. All that is left for them to do is to carry out the purposes of the act in the manner prescribed in its several sections.

Id.

In Sheriff v. Luqman, the court considered whether an amendment to the Uniform Controlled Substances Act violated the Separation-of-Powers Clause of the Nevada Constitution. 101 Nev. 149, 151 (1985). Under the Act, the State Board of Pharmacy was given the authority to classify and schedule which drugs constituted controlled substances for purposes of the criminal provisions of the Act. Because the imposition of criminal penalties depended on the classification and schedule given a particular drug by the Board, the criminal defendants argued that the Legislature's grant of exclusive authority to the Board to classify all controlled substances was an unconstitutional delegation of legislative authority to define the elements of a crime, a power held exclusively by the Legislature. Id. at 152-54. In deciding the case, the Nevada Supreme Court explained the standards for lawful delegations of power by the Legislature:

> Although the legislature may not delegate its power to legislate, it may delegate the power to determine the facts or state of things upon which the law makes its own operations depend. Thus, the legislature can make the application or operation of a statute complete within itself dependent upon the existence of certain facts or conditions, the ascertainment of which is left to the administrative agency. In doing so the legislature vests the agency with mere fact finding authority and not the authority to legislate. The agency is only authorized to determine the facts which will make the statute effective. Such authority will be upheld as constitutional so long as suitable standards are established by the legislature for the agency's

> use of its power. These standards must be sufficient to guide the agency with respect to the purpose of the law and the power authorized. Sufficient legislative standards are required in order to assure that the agency will neither act capriciously nor arbitrarily.

Id. at 153-54 (1985) (citations omitted).

Applying these parameters, the court determined that the Board's role was merely that of a factfinder which had to comply with: (1) the Act's guidelines listing the factors to be considered by the Board when scheduling drugs; and (2) the Act's requirements by which a drug can be classified into the appropriate schedule. Id. at 154. Therefore, even though the classification standards set forth in the Act were "phrased in general terms," the court concluded those standards were sufficient to prevent the Board from acting arbitrarily, and there was no unconstitutional delegation of legislative authority. Id.; see also, Nev. Indus. Comm'n v. Reese, 93 Nev. 115, 120 (1977) (no separation-of-powers violation where the statute authorized appeals officers to conduct administrative hearings and render final administrative decisions in workers' compensation cases because "a typical administrative agency exercises many types of power, including executive, legislative, and judicial"); State v. Bowman, 89 Nev. 330, 334 (1973) (no unlawful delegation of legislative authority where adequate statutory guidelines existed).

The Nevada Supreme Court has reached the same result in the context of tax legislation. In Las Vegas v. Mack, storeowners alleged that a new tax law enacted by the Legislature enabling counties to adopt an ordinance imposing a county sales tax was an unconstitutional delegation of the Legislature's own power to impose a tax. 87 Nev. 105, 107-09 (1971). The court rejected this contention as "unsound" because the tax statute left nothing to discretion; any county ordinance enacted pursuant to the tax law had to be written in substantial compliance with the statutory requirements. Id. at 109.

In this case, there are no grounds to support the assertion that the Department of Taxation and State Treasurer are clothed with anything other than ministerial or administrative powers in carrying out their duties under the C-Tax system. All distributions under the C-Tax system are done in accordance

with specific statutory formulas. NRS 360.680-360.690. The distribution amounts vary depending on local conditions, including population and the assessed valuation of taxable property. NRS 360.690. Determinations of the amount to be allocated to local governments under the statutory formulas leave no discretionary authority to the Department of Taxation. Instead, the Department of Taxation can only apply its findings of fact, based on fiscal data, to the mathematical equations.

Similarly, in the event a newly created local government applies for distribution, the Department of Taxation must review the request and consider several factors set forth in statute before submitting its findings to the Committee on Local Government Finance, which in turn submits its recommendation to the Nevada Tax Commission if it determines that distribution is appropriate. NRS 360.740(2)-(4). The Nevada Tax Commission, if it receives a recommendation from the Committee on Local Government Finance, is required to hold a public hearing concerning the application for C-Tax distribution before it decides whether to direct the Department of Taxation to distribute money to the newly created local government pursuant to the provisions of NRS 360.680 and 360.690. NRS 360.740(5)-(6). Thus, not only is the Department of Taxation constrained by legislative guidelines and requirements, application by a newly created local government for C-Tax distribution triggers a multi-agency review process and a public hearing, all of which serve to prevent any possibility of arbitrary action by the Department of Taxation.

In short, the Department of Taxation is only authorized to utilize its agency expertise in implementing the C-Tax system, and it operates within clearly defined parameters established by the Legislature. Because the Department of Taxation functions as nothing more than a factfinder under the C-Tax system and must perform its duties in accordance with clearly defined statutory standards, there has been no unconstitutional delegation of legislative authority. Furthermore, the State Treasurer performs only ministerial duties under the C-Tax system by remitting monthly amounts to each local government, special district and enterprise district in accordance with the allocations determined by the

Department of Taxation under the applicable formulas. NRS 360.690. Because the State Treasurer is given no discretion in performing these duties, there has been no unconstitutional delegation of legislative authority.

Other courts have declined to find any separation-of-powers violations under similar circumstances. In Board of Comm'rs v. Cooper, taxpayers alleged that the state's statutory procedures allowing local taxing authorities to distribute certain tax proceeds within their jurisdictional boundaries was an impermissible delegation of legislative authority. 264 S.E.2d 193, 198 (Ga. 1980). The Georgia Supreme Court rejected this assertion, reasoning that the ability of a taxing authority to simply distribute proceeds was not objectionable. Id. The court also noted that no impermissible delegation of legislative authority occurred by virtue of the tax legislation creating certain special districts, authorizing the imposition of a local option sales tax by those districts, fixing the rate of the tax, determining which transactions the tax would be levied against and specifying the purposes for which the proceeds be spent. Id.

In Amos v. Andrew, the Florida Supreme Court also rejected a claim of separation of powers violation concerning legislation that created a depository for certain funds of counties and special road and bridge districts and required the Board of Administration, comprised of the governor, the comptroller and the state treasurer, to administer and disburse those funds under certain conditions prescribed by statute. 99 Fla. 65, 78-79, 126 So. 308 (Fla. 1930). Pursuant to the legislation, the board was required, among other things, to make an annual estimate of all monies available to each county and special road and bridge district for the next fiscal year, to anticipate and appropriate certain funds and to approve the issuance of refunding bonds by county commissioners. Id. Such duties, the court held, were not legislative but instead only administrative in nature. Id.

In this case, because the Legislature has lawfully delegated administrative and ministerial duties to the Department of Taxation and State Treasurer under the C-Tax system which they must perform in

accordance with clearly defined statutory standards, there has been no unconstitutional delegation of legislative authority, and Fernley's separation-of-powers claims must be dismissed as a matter of law.

Part 8—Fernley's Article 4, §§20-21 claims must be dismissed.

In its third claim for relief, Fernley alleges that the C-Tax system violates Article 4, §20 of the Nevada Constitution because the system operates as an impermissible local or special law with respect to Fernley because it treats Fernley significantly differently for tax collection and distribution purposes from other local governmental entities. (Compl. ¶¶ 37-43.) In its fourth claim for relief, Fernley alleges that the C-Tax system violates Article 4, §21 of the Nevada Constitution because the system operates in a non-general and non-uniform fashion by treating Fernley significantly differently from other local governmental entities. (Compl. ¶¶ 44-49.)

Fernley's claims must be dismissed as a matter of law because the C-Tax statutes are not local or special laws. They are general laws of uniform operation throughout the state, and they do not violate Article 4, §§20-21. Furthermore, even if the C-Tax statutes were local or special laws, they still would not violate Article 4, §§20-21.[8]

A. The C-Tax statutes are general laws, not local or special laws.

When a statute is challenged as an invalid special or local law, the threshold issue is whether the statute is, in fact, a special or local law. Youngs v. Hall, 9 Nev. 212, 217-22 (1874). If the statute is a general law, Article 4, §§20-21 are not implicated, and the statute must be upheld. Id. A statute that applies "upon all persons similarly situated is a general law." Id. at 222. In other words, "[a] law is general when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction." Clean Water Coalition v. M Resort, 127 Nev. ___. 255 P.3d 247, 254

[8] In addition to placing limitations on special and local laws, Article 4, §21 also requires equal protection of the laws and is equivalent to the federal Equal Protection Clause. Flamingo Paradise, 125 Nev. at 520; Laakonen v. Dist. Ct., 91 Nev. 506, 508-09 (1975). To the extent that Fernley's allegations raise state equal protection claims under Article 4, §21, Fernley's state claims must be dismissed for the same reasons already discussed regarding its federal equal protection claims.

(2011) (quoting Colman v. Utah State Land Bd., 795 P.2d 622, 636 (Utah 1990)). The determination of whether a law is general "is based on how it is applied, not on how it actually operates." Id. at 255.

The C-Tax statutes apply statewide to all similarly situated local governments. All distributions under the C-Tax system are subject to the same statutory formulas that take into account changes in a local government's population and the assessed valuation of taxable property. The C-Tax statutes do not single out Fernley by name or subject it to specialized burdens that would not be imposed on other similarly situated cities or towns. Cf. Clean Water Coalition, 255 P.3d at 253-62 (holding that a statute which singled out a political subdivision by name and subjected it to specialized burdens not imposed on other political subdivisions was not a general law).

Under the C-Tax statutes, if Fernley provided the requisite public services, it would be placed in the same class as other similarly situated cities and towns which provide those public services. NRS 360.740; NRS 354.598747. But because Fernley does not provide the requisite public services, it is not similarly situated to those other cities and towns, so there is a rational basis for placing Fernley in a different class from those other cities and towns. Thus, because the C-Tax statutes apply uniformly to all similarly situated local governments embraced in classes founded upon natural, intrinsic and rational distinctions, the C-Tax statutes are general laws of uniform operation throughout the state, and they do not violate Article 4, §§20-21. Therefore, Fernley's Article 4, §§20-21 claims must be dismissed as a matter of law.

B. Even if the C-Tax statutes were local or special laws, they still would not violate Article 4, §§20-21.

Although the Nevada Constitution expresses a preference for general laws, local and special laws are not per se unconstitutional. Clean Water Coalition, 255 P.3d at 255. A local or special law must be upheld when: (1) it does not come within any of prohibited categories in Article 4, §20; and (2) it conforms with Article 4, §21 because a general law could not have been made applicable under the

circumstances. Id.

Fernley alleges that the C-Tax statutes are local or special laws "[f]or the assessment and collection of taxes" which violate Article 4, §20. However, the prohibition in Article 4, §20 regarding "the assessment and collection of taxes" applies only to laws which regulate the method or manner in which local assessors and collectors of taxes perform their assessment and collection duties. Reno, 94 Nev. at 334-35; Cauble v. Beemer, 64 Nev. 77, 87-88 (1947); Washoe County Water Dist. v. Beemer, 56 Nev. 104, 117 (1935). As further explained by the Court, "[w]e are clearly of opinion that the constitutional provision simply prohibits special legislation regulating those acts which the assessors and collectors of taxes generally perform, and which are denominated 'assessment' and 'collection of taxes.'" Gibson v. Mason, 5 Nev. 283, 305 (1869). A law cannot violate Article 4, §20 when it "contains no provision whatever respecting the assessment or collection of the tax complained of, in the sense in which those words are employed in the Constitution." Id.

The C-Tax statutes contain no provisions dealing with the assessment or collection of the six statewide taxes that are deposited in the Account. The C-Tax statutes deal only with distribution of the proceeds of the taxes after they are assessed and collected. Thus, even if the C-Tax statutes were local or special laws, they would not be local or special laws "[f]or the assessment and collection of taxes" which violate Article 4, §20. Furthermore, none of Fernley's allegations concern the assessment or collection of the six statewide taxes that are deposited in the Account. Instead, all of Fernley's allegations concern the distribution of the proceeds of the taxes after they are assessed and collected. Therefore, Fernley's claim that the C-Tax statutes are local or special laws "[f]or the assessment and collection of taxes" which violate Article 4, §20 must be dismissed as a matter of law.

Finally, under Article 4, §21, the Legislature has the power to enact special and local laws "unless it manifestly appear[s] that a general law could have been made applicable." Hess v. Pegg, 7 Nev. 23, 28 (1871). The Supreme Court has rejected the notion that a special or local law is invalid simply

because it is possible to conceive of general laws that could have addressed some of the purposes of the legislation. State ex rel. Clarke v. Irwin, 5 Nev. 111, 122-25 (1869); Hess, 7 Nev. at 28. The Supreme Court focuses on whether such general laws would sufficiently "answer the just purposes of [the] legislation; that is, best subserve the interests of the people of the State, or such class or portion as the particular legislation is intended to affect." Clarke, 5 Nev. at 122. In applying the test, the Supreme Court has stated that the Legislature's decision to enact a special or local law must stand where a general law "fails to accomplish the proper and legitimate objects of [the] legislation." Hess, 7 Nev. at 30; Evans v. Job, 8 Nev. 322, 340-41 (1873).

Furthermore, because the determination of whether a general law could have been made applicable involves the exercise of legislative policy-making and judgment, the Supreme Court gives great deference to such legislative judgment because "[p]rimarily, the legislature must decide whether or not, in a given case, a general law can be made applicable." Hess, 7 Nev. at 28. Although the decision of the Legislature may be reviewed by the courts, any such review must begin with the presumption that the decision of the Legislature is correct. Id. Thus, "in the absence of a showing to the contrary, the court seldom goes contra to the very strong presumption that the legislature has good reason for determining that a general law is not or would not be applicable in some particular cases." Washoe County Water Dist., 56 Nev. at 121.

The Supreme Court has identified and explained the types of situations under which the Legislature's decision to enact a special or local law will be upheld:

> The legislature, and not the courts, is the supreme arbiter of public policy and of the wisdom and necessity of legislative action. This court has repeatedly upheld the constitutionality of special or local acts of the legislature, passed, in some instances, because the general legislation existing was insufficient to meet the peculiar needs of a particular situation, and, in other instances, for the reason that facts and circumstances existed, in relation to a particular situation, amounting to an emergency which required more speedy action and relief than could be had by proceeding under the existing general law.

Cauble, 64 Nev. at 96.

Thus, the Legislature may enact special or local laws under circumstances where the Legislature reasonably believes that: (1) general laws would be insufficient to meet the peculiar needs of the particular situation; or (2) the exigencies of the particular situation amount to an emergency which requires more speedy action and relief than could be had by proceeding under general laws. These two situations are separate and distinct. If the Legislature enacts a special or local law under either type of situation, the special or local law must be upheld. In applying these principles to specific cases, the Supreme Court has upheld a special and local law which transferred property from a city to another political subdivision because such a transfer was necessary to answer the just purposes of the legislation and best serve the interests of the people. Reno, 94 Nev. at 327.

The Legislature enacted the C-Tax system based on "the idea of distributing governmental revenues to governments performing governmental functions." Legislative History of SB254, supra, at 50. The Legislature wanted to ensure that more tax revenues are distributed to those local governments which provide more public services, such as police and fire-protection services. Unlike many other cities and towns, Fernley does not provide police and fire-protection services. Thus, Fernley stands in stark contrast to other cities and towns under the C-Tax system, and its distinct and different circumstances present peculiar needs in a particular situation. Given the unique nature of Fernley's circumstances, it would be reasonable for the Legislature to believe that general laws would be insufficient to meet the peculiar needs of this particular situation and that special or local laws were necessary to answer the just purposes of the legislation and best serve the interests of the people of the state. Therefore, even if the C-Tax statutes were special or local laws, they still would be constitutional under Article 4, §21 because no general law could have been made applicable given the unique nature of Fernley's circumstances. Accordingly, Fernley's claims under Article 4, §21 must be dismissed as a matter of law.

CONCLUSION

Based upon the foregoing, the Legislature respectfully asks the Court to enter an order dismissing, with prejudice under NRCP 12(b)(5), all causes of action and claims alleged in the Complaint filed by the Plaintiff on June 6, 2012.

The undersigned hereby affirm that this document does not contain "personal information about any person" as defined in NRS 239B.030 and 603A.040.

DATED: This **16th** day of August, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **16th** day of August, 2012, I served a true and correct copy of the Legislature's Joinder in Motion to Dismiss, by depositing the same in the United States Mail, postage prepaid, and by electronic mail, directed to the following:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

vs.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive,

Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

NEVADA LEGISLATURE'S EXHIBITS TO JOINDER IN MOTION TO DISMISS

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **16th** day of August, 2012, I served a true and correct copy of the Legislature's Exhibits to its Joinder in Motion to Dismiss, by depositing the same in the United States Mail, postage prepaid, and by electronic mail, directed to the following:

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Exhibit 1

Nevada Legislature

Exhibit 1

Laws Relating to the Distribution Among Local Governments of Revenue From State and Local Taxes

Legislative Counsel Bureau

Bulletin No. 97-5

January 1997

LAWS RELATING TO THE DISTRIBUTION AMONG LOCAL GOVERNMENTS OF REVENUE FROM STATE AND LOCAL TAXES

BULLETIN NO. 97-5

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

January 1997

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Appellant,

vs.

THE STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION; THE HONORABLE DAN SCHWARTZ, in his official capacity as TREASURER OF THE STATE OF NEVADA; and THE LEGISLATURE OF THE STATE OF NEVADA,

Respondents.

Supreme Court No.: 66851

District Court Case No.: 12 OC 00168 1B

JOINT APPENDIX

VOLUME 1 PART 1

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Plaintiff, v. STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive, Defendants.	Case No.: 12 OC 00168 1B Dept. No.: I

COMPLAINT

For its Complaint against Defendants the State of Nevada ex rel. the Nevada Department of Taxation (the "Department") and the Honorable Kate Marshall, in her official capacity as Treasurer of the State of Nevada ("Treasurer") (collectively "Defendants"), Plaintiff the City of Fernley, Nevada ("Fernley") alleges as follows:

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PARTIES

1. Fernley is a Nevada municipal corporation, located in Lyon County, Nevada. Fernley is not a debtor in bankruptcy.

2. The Department is an executive branch agency of the State of Nevada. The Department's responsibilities include general supervision and control over the entire revenue system of the State of Nevada.

3. The Treasurer is a constitutional officer in the executive branch of the State of Nevada. The Treasurer's responsibilities include, *inter alia*, the disbursement of public monies.

BACKGROUND

4. In 1997, the State of Nevada, through its Legislature, established a system, unique to Nevada, known as the Consolidated Tax (the "C-Tax") system. At the time the C-Tax system was established fifteen years ago, Fernley was an unincorporated town, with a population of approximately 8,000 people.

5. The C-Tax system was intended to provide revenue stability and an equitable distribution of certain tax revenues among Nevada's counties and local governments, and the Defendants are responsible for administering the C-Tax system to achieve those ends.

6. C-Tax revenues are comprised of the following six (6) taxes collected in Nevada: (i) the Cigarette Tax; (ii) the Liquor Tax; (iii) the Government Services Tax (the "GST"); (iv) the Real Property Transfer Tax (the "RPTT"); (v) the Basic City County Relief Tax (the "BCCRT"); and (vi) the Supplemental City County Relief Tax (the "SCCRT"). The BCCRT and SCCRT are percentages of the overall Sales and Use Tax rate, 0.50% and 1.75%, respectively, of the 6.85% statewide Sales and Use Tax.

7. The revenues collected from the six (6) taxes described in Paragraph 7 above are consolidated by the Department and then distributed by the Treasurer, at the direction of the Department, on a monthly basis as follows: (i) the Cigarette Tax is distributed to Nevada's counties based on population; (ii) the Liquor Tax is distributed to Nevada's counties based on population; (iii) the GST is distributed to the county in which it was collected; (iv) the RPTT is distributed to the county in which it was collected; (v) the BCCRT is distributed, when collected

from in-state companies, to the county in which the in-state company is located and, when collected from out-of-state companies, to Nevada's counties based on population; and (vi) the SCCRT is distributed to Nevada's counties based on a statutory formula found at Nevada Revised Statutes ("NRS") 377.057. Pursuant to NRS 377.057, nine (9) of Nevada's seventeen (17) counties, including Lyon County, receive a guaranteed monthly allocation of SCCRT revenues, regardless of their SCCRT receipts.

8. C-Tax revenues are distributed monthly in tiers. Tier 1 Distributions go to Nevada's seventeen (17) counties, in varying amounts based on the factors described in Paragraph 8 above. Tier 2 Distributions are distributions of the Tier 1 amounts and are made to the various local governments and special districts within that county. Tier 2 Distributions are made according to statutory "Base" and "Excess" allocation formulas, found at NRS 360.680 and 360.690, respectively. There are no restrictions on what C-Tax revenues can be used for by a county or local government, and in fact C-Taxes are commonly used for general operating expenses.

9. Fernley incorporated in 2001. Fernley is the only municipality to incorporate in Nevada since the C-Tax system was implemented in 1997. No meaningful adjustments were made to Fernley's C-Tax distribution after its incorporation in 2001 and, even today, despite significant growth in population and assessed property valuation, Fernley receives a C-Tax distribution similar to its distributions as an unincorporated town in 1997. For example, in 1997, Fernley, then an unincorporated town, received approximately $86,000 in C-Tax distributions. In 2001, the year Fernley incorporated, it received $110,685 in C-Tax distributions. In 2011, Fernley received $143,143 in C-Tax distributions.

10. Today, Fernley, home to a major Amazon.com distribution center since 1999, is the seventh most populous city in Nevada, with a population of approximately 19,000 people. Lyon County, within which Fernley is located, is Nevada's fourth most populous county, with a population of approximately 52,000 people, some 36% of whom live in Fernley.

11. Despite experiencing population growth of approximately 250% since the C-Tax system was established, Fernley's current C-Tax distributions are not significantly different from what it received as an unincorporated town in the late 1990s.

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12. Comparisons of C-Tax distributions to comparably sized jurisdictions in Nevada are striking. C-Tax distributions for 2010-2011 to comparably sized Nevada towns or cities include: Fallon ($1,409,664); Boulder City ($7,935,323); Elko ($11,015,989); West Wendover ($2,275,011); Winnemucca ($3,552,393); Mesquite ($7,046,690); and Ely ($1,142,528). The average C-Tax distribution to these jurisdictions in 2010-2011 was $4,910,571. Again, Fernley's C-Tax distribution for the same year was just $143,143.

13. Of the $14.836 million Lyon County received in Tier 1 C-Tax Distributions in 2011, Fernley received a total of only $143,000 in Tier 2 Distributions, which is less than 1% of Lyon County's 2011 Tier 1 C-Tax Distributions. Put another way, in 2011, Fernley received approximately $7 in C-Tax revenue per resident. By comparison, in Clark County, Boulder City and Mesquite, both of which are less populous than Fernley, received 2011 Tier 2 C-Tax Distributions totaling $7.935 million and $7.047 million, respectively (between $450 and $550 per resident). In Elko County, the City of Elko, the population of which is comparable to Fernley's, received $11.016 million in 2011 Tier 2 C-Tax Distributions, roughly one hundred times more than Fernley.

14. The C-Tax system is not designed to allow for any meaningful adjustment to distributions. The Department has no ability to adjust Tier 1 Distributions, and can only make minor adjustments to Tier 2 Distributions if local governments agree to a transfer of services. Other adjustments are permanently barred to a municipality if they are not requested within 12 months of incorporation. What this means is that a jurisdiction like Fernley, that begins with a low base allocation, has no hope of ever obtaining a meaningful adjustment.

15. Fernley has been rebuffed in its efforts to obtain a larger share of the distribution to Lyon County.

16. Fernley has been rebuffed in its efforts to obtain relief from the Nevada Legislature. In 2011, Fernley promoted a bill to increase its base C-Tax allocation. That bill received one committee hearing and died, never receiving even so much as a committee vote.

17. Fernley has exhausted all of its options to obtain an adjustment to its C-Tax distribution, leaving Fernley in the position of having no choice but to seek relief from this Court.

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18. Fernley's inability to obtain any adjustment to its C-Tax distribution severely limits Fernley's ability to operate and plan for its future.

19. As administered by the Defendants, Nevada's C-Tax system denies Fernley equal protection, in violation of Section 1 of Amendment XIV of the United States Constitution. Nevada's C-Tax system further violates the separation of powers, creates a special law, operates in a non-uniform and non-general fashion, and imposes non-uniform and unequal taxation within the State of Nevada, all in violation of the Nevada Constitution and to Fernley's harm.

FIRST CLAIM FOR RELIEF

(Denial of Equal Protection in Violation of Section 1 of the Fourteenth Amendment to the United States Constitution)

20. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 19 as though fully set forth herein.

21. The Fourteenth Amendment to the United States Constitution prohibits a State from denying equal protection of its laws to any person within its jurisdiction.

22. As administered by the Defendants, Nevada's C-Tax system results in Fernley receiving distributions that are substantially less than what is received by other, comparably populated and similarly situated Nevada towns and cities.

23. As administered by the Defendants, Nevada's C-Tax system is non-uniform and unequal in its effect upon Fernley as compared to other similarly situated Nevada towns and cities.

24. As administered by the Defendants, Nevada's C-Tax system denies Fernley and its citizens the equal protection of Nevada's laws.

25. The denial of Fernley's equal protection of the law by the Defendants has proximately caused damages to Fernley, in an amount to be determined at trial.

26. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

27. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

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SECOND CLAIM FOR RELIEF

(Violation of the Separation of Powers Clause of the Nevada Constitution)

28. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 27 as though fully set forth herein.

29. Article 3, Section 1 of the Nevada Constitution provides that the powers of the State government are divided into three branches and that no person charged with the exercise of powers properly belonging to one of those branches may be exercised by either of the other branches.

30. Legislative authority in Nevada is vested in the Nevada Legislature, including the power to control the raising and distribution of revenues.

31. The Nevada Legislature is empowered to direct the distribution of C-Tax revenues to counties and local governments.

32. The C-Tax system, which is administered by the executive branch of the state government, is set up so that the legislative authority over the C-Tax system is abdicated to and exercised by the executive branch of state government.

33. As administered by Defendants, the C-Tax system violates the Separation of Powers Clause of the Nevada Constitution.

34. The violation of the separation of powers clause has proximately caused damages to Fernley, in an amount to be determined at trial.

35. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

36. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF

(Creation of a Special Law in Violation of Article 4, Section 20 of the Nevada Constitution)

37. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 36 as though fully set forth herein.

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38. Article 4, Section 20 of the Nevada Constitution provides that the Nevada Legislature shall not pass local or special laws pertaining to the assessment and collection of taxes for state, county and township purposes.

39. Fernley and its residents are net exporters of tax revenues into the C-Tax system and receive substantially less in C-Tax distributions than are submitted in C-Tax collections.

40. As administered by Defendants, the C-Tax system operates as a local or special law with respect to Fernley, by treating Fernley significantly differently for tax collection and distribution purposes than other local governments.

41. The violation of Article 4, Section 20 of the Nevada Constitution has proximately caused damages to Fernley, in an amount to be determined at trial.

42. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

43. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Violation of Article 4, Section 21 of the Nevada Constitution)

44. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 43 as though fully set forth herein.

45. Article 4, Section 21 of the Nevada Constitution provides that in all cases where a general law can be made applicable, that all laws shall be general and of uniform operation throughout the State.

46. As administered by Defendants, the C-Tax system operates in a non-general and non-uniform fashion by treating Fernley significantly differently from other local governments.

47. The violation of Article 4, Section 21 of the Nevada Constitution has proximately caused damages to Fernley, in an amount to be proven at trial.

48. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

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49. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF

(Denial of Due Process in Violation of Section 1 of the 14th Amendment to the United States Constitution)

50. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 49 as though fully set forth herein.

51. The Fourteenth Amendment to the United States Constitution prohibits a State from denying due process of law to any person within its jurisdiction.

52. As administered by the Defendants, Nevada's C-Tax system results in Fernley receiving tax revenue distributions that are substantially less than what is received by other local governments and provides no process by which Fernley can obtain a meaningful and effective adjustment of such tax distributions.

53. As administered by the Defendants, Nevada's C-Tax system prevents Fernley and its citizens from any meaningful adjustment to C-Tax distributions.

54. As administered by the Defendants, Nevada's C-Tax system denies Fernley and its residents of due process of law.

55. The denial of due process by the Defendants has proximately caused damages to Fernley, in an amount to be determined at trial.

56. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

57. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief)

58. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 57 as though fully set forth herein.

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59. As set forth above, through the operation of Nevada's C-Tax system, as administered by the Defendants, Fernley has been deprived of its rights under the United States and Nevada Constitutions.

60. Fernley has inquired of Defendants in writing regarding what remedies Defendants would be able to afford Fernley.

61. Defendants have indicated that they will not and cannot provide adequate remedies to Fernley.

62. As such, an actual justiciable controversy has arisen with respect to the following issues:

a) Whether Nevada's C-Tax system, as administered by the Defendants, gives Fernley the equal protection of Nevada's laws;

b) Whether Nevada's C-Tax system, as administered by the Defendants, violates the Separation of Powers Clause of the Nevada Constitution;

c) Whether Nevada's C-Tax system, as administered by the Defendants, operates as a local or special law for the assessment and collection of taxes for state, county and township purposes;

d) Whether Nevada's C-Tax system, as administered by the Defendants, violates the mandate of the Nevada Constitution that all laws be of general and uniform operation throughout the State; and

g) Whether Nevada's C-Tax system, as administered by the Defendants, gives Fernley due process.

63. Fernley contends that the answer to all of the above questions results in a determination that the C-Tax system is unlawful on its face and on an as-applied basis to Fernley. Thus, there presently exists a ripe case and controversy for which the parties are in need of declarations from the Court to resolve their respective rights under the United States and Nevada Constitutions.

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64. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief)

65. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 64 as though fully set forth herein.

66. Fernley has suffered and will continue to suffer immediate, great and irreparable injury, loss or damage if the Defendants are allowed to continue to administer Nevada's C-Tax as they have been, with the resultant deprivation of Fernley's rights under the United States and Nevada Constitutions.

67. Fernley is entitled to restrain the Defendants from administering Nevada's C-Tax system in a way which infringes upon Fernley's Constitutional rights and works to Fernley's prejudice.

68. Defendants' administration of Nevada's unconstitutional C-Tax system to Fernley's prejudice is both ongoing and imminent.

69. Fernley seeks an order from this Court enjoining the Defendants, as well as those persons acting on their behalf or in concert with them, from making or causing to be made any distributions under Nevada's C-Tax system, until such time as this Court rules upon the declaratory relief requested herein and thereafter to the extent the Court deems appropriate.

70. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

WHEREFORE, Fernley prays for judgment as follows:

1. On its First Claim for Relief, for damages in an amount to be proven at trial;

2. On its Second Claim for Relief, for damages in an amount to be proven at trial;

3. On its Third Claim for Relief, for damages in an amount to be proven at trial;

4. On its Fourth Claim for Relief, for damages in an amount to be proven at trial;

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5. On its Fifth Claim for Relief, for damages in an amount to be proven at trial;

6. On its Sixth Claim for Relief, for declarations as follows:

a) That Nevada's C-Tax system, as administered by the Defendants, denies Fernley and its residents the equal protection of Nevada's laws, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution;

b) That Nevada's C-Tax system, as administered by the Defendants, violates the Separation of Powers Clause of the Nevada Constitution;

c) That Nevada's C-Tax system, as administered by the Defendants, operates as a local or special law for the assessment and collection of taxes for state, county and township purposes and therefore violates Article 4, Section 20 of the Nevada Constitution;

d) That Nevada's C-Tax system, as administered by the Defendants, violates the mandate of Article 4, Section 21 of the Nevada Constitution that all laws be of general and uniform operation throughout the State; and

e) That Nevada's C-Tax system, as administered by the Defendants, denies Fernley and its residents guarantees of due process, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

7. On its Seventh Claim for Relief, for the issuance of an injunction enjoining the Defendants, as well as those persons acting on their behalf or in concert with them, from making or causing to be made any distributions under Nevada's C-Tax system, until such time as this Court rules upon the declaratory relief requested herein and thereafter to the extent the Court deems appropriate;

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8. Attorneys' fees and costs of suit; and

9. Any further relief this Court deems proper.

DATED this 6th day of June, 2012.

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive,

Defendants.

Case No.: 12 OC 00168 1B
Dept. No.: I

SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

THE HONORABLE KATE MARSHAL, TREASURER OF THE STATE OF NEVADA

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND ~~WITHIN 20 DAYS. READ~~ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court, a written pleading* in response to the Complaint.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. You are required to serve your response upon plaintiff's attorney whose address is

Joshua Hicks, Esq.
Brownstein Hyatt Farber Schreck
9210 Prototype Drive, Suite 250
Reno, Nevada 89521

ALAN GLOVER, Clerk of the Court

By: _____, Deputy Clerk

Date: June 8, 2012.

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CARSON CITY, STATE OF NEVADA

CITY OF FERNLEY, NEVADA

Plaintiff,

Case No:12OC001681B

vs.

Dept.No:

STATE OF NEVADA EX REL. THE NEVADA DEPARTMENT OF TAXATION, ET AL.

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF WASHOE ss.:

JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affidant received copy(ies) of the **SUMMONS; CIVIL COVER SHEET; COMPLAINT; AFFIRMATION**, on **06/13/2012** and served the same on **06/13/2012** at **1:55 PM** by delivering and leaving a copy with:

STEVE GEORGE, ADMINISTRATIVE ASSISTANT who stated he/she is authorized to accept service on behalf of **THE HONORABLE KATE MARSHALL, IN HER OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA.**

Service address:101 NORTH CARSON ST Carson City, NV 89701

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on the 06/14/2012 by **JOHN LEE**

Notary

X _____
JOHN LEE
Registration#: R-004475
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno,NV 89509
775.322.2424
Atty File#: 015342.0001

7658

JOHNNO LAZETICH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-93542-2 - Expires January 28, 2016

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CARSON CITY, STATE OF NEVADA

CITY OF FERNLEY, NEVADA

Plaintiff,

Case No:12OC001681B

vs.

Dept.No:

STATE OF NEVADA EX REL. THE NEVADA DEPARTMENT OF TAXATION, ET AL.

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF WASHOE ss.:

JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affidant received copy(ies) of the **SUMMONS; CIVIL COVER SHEET; COMPLAINT; AFFIRMATION**, on **06/13/2012** and served the same on **06/13/2012** at **2:35 PM** by delivering and leaving a copy with:

ASHLEY BOYNTON, PROCESS SPECIALIST who stated he/she is authorized to accept service on behalf of **STATE OF NEVADA EX REL. THE NEVADA DEPARTMENT OF TAXATION.**

Service address:1550 COLLEGE PKWY STE 115 Carson City, NV 89706

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on the
06/14/2012 by **JOHN LEE**

Notary

JOHNNO LAZETICH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-85542-2 - Expires January 28, 2016

X
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7656

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CARSON CITY, STATE OF NEVADA

REC'D & FILED
2012 JUL -2 PM 3:34
ALAN GLOVER
BY
C. Cooper CLERK

CITY OF FERNLEY, NEVADA

Plaintiff,

vs.

Case No:12 OC 00168 1B

Dept.No: 1

STATE OF NEVADA EX REL. THE NEVADA DEPARTMENT OF TAXATION, ET AL.

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CARSON CITY ss.:

WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affidant received copy(ies) of the **SUMMONS; COMPLAIN**, on **06/21/2012** and served the same on **06/21/2012** at **4:40 PM** by delivering and leaving a copy with:

TRINA GIBSON, PROCESS SPECIALIST who stated he/she is authorized to accept service on behalf of **STATE OF NEVADA EX REL. THE NEVADA DEPARTMENT OF TAXATION.**

Service address:100 N. CARSON ST NEVADA ATTORNEY GENERAL CARSON CITY, NV 89705

A description of **TRINA GIBSON** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	**Caucasian**	**Brown**	**40-50**	**5ft4in-5ft8in**	**161-200 lbs**
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on the
06/22/2012 by **WADE MORLAN**

Notary

JOHNNO LAZETICH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-89542-2 - Expires January 20, 2016

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8374

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Attorneys for the Legislature of the State of Nevada

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

vs.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive,

Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

NEVADA LEGISLATURE'S MOTION TO INTERVENE

MOTION

The Legislature of the State of Nevada (Legislature), by and through its counsel, the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby moves the Court for an order granting the Legislature's Motion to Intervene in this action as a Defendant pursuant to NRCP 24 and NRS 218F.720.[1] This Motion is made under FJDCR 15 and is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow. Pursuant to NRCP 24(c), this Motion is accompanied by the Legislature's proposed Answer to the Complaint, which is attached as Exhibit 1.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Summary of the Argument.

On June 6, 2012, the City of Fernley (Plaintiff) filed a Complaint against the Nevada Department of Taxation and Kate Marshall in her official capacity as Treasurer of the State of Nevada (collectively, Defendants). The Summons was filed on June 8, 2012. On June 13, 2012, the Defendants were served with the Summons and Complaint. Shortly thereafter, the Office of the Attorney General, as the agency charged with representing the Defendants, was also served with the Summons and Complaint on June 21, 2012. The Defendants' time for filing an answer or other responsive pleading has not yet run under NRCP 12(a)(3).

The Plaintiff is challenging the constitutionality of Nevada's system of allocating certain statewide tax revenues consolidated into and disbursed from the Local Government Tax Distribution Account to counties and various local governments. The Plaintiff contends that this system of allocation, commonly referred to as the consolidated tax or CTX system, violates: (1) the Fourteenth Amendment to the United States Constitution by denying equal protection; (2) the Separation of Powers Clause set forth in Article 3, §1 of the Nevada Constitution; (3) Article 4, §20 of the Nevada Constitution by creating a

[1] NRCP 24 and NRS 218F.720 are reproduced in the Addendum following the Memorandum of Points and Authorities.

special law; (4) Article 4, §21 of the Nevada Constitution by creating a law that is not general and of uniform operation throughout the State of Nevada; (5) and the Fourteenth Amendment of the United States Constitution by denying due process. Consequently, the Plaintiff seeks declaratory and injunctive relief, as well as damages in an amount to be proven at trial.

Because the Plaintiff is challenging the constitutional authority of the Legislature to enact legislation for the allocation of certain taxes to counties and local governments within the State of Nevada, the Legislature is timely moving to intervene in this case pursuant to NRCP 24(a)(1) and NRS 218F.720. The statute confers an unconditional right to intervene when a party in any action or proceeding alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional. When a party makes such a constitutional challenge, the statute provides that:

> the Legislature has an *unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party.

NRS 218F.720(3) (emphasis added). Therefore, under NRCP 24(a)(1) and NRS 218F.720, the Legislature has an unconditional right and standing to intervene in this action.

In addition, the Legislature qualifies for intervention as of right under NRCP 24(a)(2) because the Legislature has substantial interests in the subject matter of this case which may be impaired if the Legislature is not permitted to intervene and which may not be adequately represented by existing parties. The Legislature also qualifies for permissive intervention under NRCP 24(b) because this case involves extremely important questions of constitutional law whose resolution may have a substantial impact on the scope of the Legislature's constitutional authority over fiscal and tax policies and the performance of its public duties.

Finally, the Legislature has acted with appropriate haste and diligence to intervene in order to protect its official interests, and the Legislature's participation will not delay the proceedings or complicate the management of the case and will not cause any prejudice to existing parties. If permitted to intervene, the Legislature would be in a position to protect its official interests by providing a more comprehensive and thorough presentation of the controlling law and a better understanding of the issues, and the Court would be ensuring that the views of the Legislature are fairly and adequately represented. Therefore, because the Legislature has acted with appropriate haste and diligence to intervene in this case in order to protect its official interests, the Legislature's Motion to Intervene should be granted.

II. Argument.

A. Intervention as of right.

Under NRCP 24(a), an applicant qualifies for intervention as of right under two circumstances. Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1235 (2006). First, under subsection (a)(1), an applicant is entitled to intervene "when a statute confers an unconditional right to intervene." Second, under subsection (a)(2), an applicant is entitled to intervene when:

> the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

NRCP 24(a)(2). In this case, the Legislature qualifies for intervention as of right under both subsections of NRCP 24(a).

(1) The Legislature qualifies for intervention as of right under NRCP 24(a)(1).

To qualify for intervention as of right under NRCP 24(a)(1), the applicant must prove that: (1) a statute confers upon the applicant an unconditional right to intervene; and (2) the applicant's motion to intervene is timely. See EEOC v. Gmri, Inc., 221 F.R.D. 562, 563 (D. Kan. 2004); EEOC v. Taylor Elec.

Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994).[2]

In determining whether a statute confers upon the applicant an unconditional right to intervene for purposes of NRCP 24(a)(1), the issue before the court is one of statutory construction, and the court must limit its inquiry to the terms of the statute and must not consider any of the factors listed in NRCP 24(a)(2). See Bhd. of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 525-31 (1947); Ruiz v. Estelle, 161 F.3d 814, 828 (5th Cir. 1998). Consequently, the applicant is not required to prove that existing parties may be inadequately representing its interests or that its interests may be impaired if it is not allowed to intervene. Ruiz, 161 F.3d at 828. Instead, the applicant is required to prove only that it qualifies for intervention under the terms of the statute. Bhd. of R.R. Trainmen, 331 U.S. at 531. Upon meeting the statutory requirements for intervention, "there is no room for the operation of a court's discretion" and "the right to intervene is absolute and unconditional." Id.; see also United States v. Presidio Invs., Ltd., 4 F.3d 805, 808 n.1 (9th Cir. 1993).

Under NRS 218F.720, the Legislature may elect to intervene in any action or proceeding when a party alleges that the Legislature, by its actions or failure to act, has violated the Nevada Constitution or when a party contests or raises as an issue that any law is invalid, unenforceable or unconstitutional. To intervene in the action or proceeding, the Legislature must file "a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding." NRS 218F.720(2). If the Legislature files such a motion or request to intervene:

> the Legislature has an *unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party.

---

[2] When interpreting the provisions of NRCP 24 regarding intervention, the Nevada Supreme Court often looks to federal cases interpreting the analogous provisions of the Federal Rules of Civil Procedure. Am. Home Assurance, 122 Nev. at 1238-39; Lawler v. Ginochio, 94 Nev. 623, 626 (1978). Thus, in determining whether intervention is appropriate under NRCP 24, such federal cases "are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119 (1990)).

NRS 218F.720(3) (emphasis added).

In this case, the Plaintiff alleges that the CTX system, as enacted by the Legislature and implemented by the Defendants, is unconstitutional because the CTX system improperly deprives the Plaintiff of an equitable share of the allocated distributions from the Local Government Tax Distribution Account. (Compl. ¶¶ 4-19.) Thus, the Plaintiff alleges that the statutory method for the allocation of the consolidated taxes, as enacted by the Legislature, violates the Nevada Constitution. (Compl. ¶¶ 33, 40, 46, 54.) The Plaintiff also alleges that the CTX system violates the United States Constitution. (Compl. ¶¶ 24, 54.)

Nevada's CTX system was first created in 1997 by the enactment of Senate Bill No. 254 (S.B. 254) (69th Sess. 1997), 1997 Nev. Stat., ch. 660, at 3278-3304. The statutory provisions of the CTX system have since been amended numerous times during subsequent regular and special legislative sessions. In its Complaint, the Plaintiff does not assert that only certain provisions of the CTX system are unconstitutional. Rather, the Complaint alleges that the entire system, as administered, is unconstitutional. (Compl. ¶ 19.) Thus, the Plaintiff is clearly alleging that the Legislature violated both the federal and state constitutions not only when it enacted S.B. 254, but also when the Legislature enacted all subsequent legislation amending the initial statutory framework of the CTX system. Accordingly, the Plaintiff is alleging that S.B. 254 and all of the legislation that followed throughout the gradual evolution of the CTX system are invalid, unenforceable or unconstitutional. Given these allegations, the Legislature has an unconditional right to intervene under NRS 218F.720.

Because NRS 218F.720 confers an unconditional right to intervene, the Legislature's Motion to Intervene must be granted so long as the motion is timely. The timeliness of a motion to intervene is a determination that lies within the discretion of the district court. Lawler, 94 Nev. at 626; Cleland v. Dist. Ct., 92 Nev. 454, 456 (1976). In determining whether a motion to intervene is timely, the court must consider the age of the lawsuit, the length of the applicant's delay in seeking intervention after learning

of the need to intervene, and the extent of any prejudice to the rights of existing parties resulting from the delay. Am. Home Assurance, 122 Nev. at 1244; Dangberg Holdings Nev. v. Douglas County, 115 Nev. 129, 141 (1999). If the applicant's intervention would cause prejudice to the rights of existing parties, the court must weigh that prejudice against any prejudice resulting to the applicant if the motion to intervene is denied. Am. Home Assurance, 122 Nev. at 1244.

In this case, the Plaintiff filed its Complaint on June 6, 2012, and served the Defendants with the Summons and Complaint on June 13, 2012. The Office of the Attorney General, as legal counsel for the Defendants, was served by the Plaintiff on June 21, 2012. The Defendants' time for filing an answer or other responsive pleading has not yet run under NRCP 12(a)(3). Accordingly, because this case is still in its earliest stages, this Motion to Intervene is timely. See EEOC v. Taylor Elec. Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994) (finding that motion to intervene filed four months after plaintiff commenced action was timely where no discovery had been conducted in the case).

In sum, because the Legislature has an unconditional right to intervene under NRS 218F.720 and because the Legislature's Motion to Intervene is timely, the Legislature meets the standards for intervention as of right under NRCP 24(a)(1). Therefore, the Legislature's Motion to Intervene should be granted.

(2) The Legislature qualifies for intervention as of right under NRCP 24(a)(2).

As a general rule, courts give NRCP 24(a)(2) a broad and liberal construction in favor of intervention as of right. State Indus. Ins. Sys. v. Dist. Ct., 111 Nev. 28, 32 (1995), *overruled in part on other grounds by* Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229 (2006); Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003) ("Rule 24 traditionally receives liberal construction in favor of applicants for intervention."); Scotts Valley Band of Pomo Indians v. United States, 921 F.2d 924, 926 (9th Cir. 1990) ("Rule 24(a) is construed broadly, in favor of the applicants for intervention.").

To qualify for intervention as of right under NRCP 24(a)(2), the applicant must establish that: (1) the applicant has sufficient interests in the subject matter of the litigation; (2) the applicant's ability to protect those interests could be impaired if the applicant is not permitted to intervene; (3) the applicant's interests may not be adequately represented by the existing parties; and (4) the application is timely. Am. Home Assurance, 122 Nev. at 1238. The determination of whether an applicant has met the four requirements is within the discretion of the district court. Id. As discussed previously, the Legislature's Motion to Intervene is timely. The Legislature also meets the remaining requirements for intervention as of right under NRCP 24(a)(2).

(a) The Legislature has significantly protectable interests in the subject matter of this action which will be impaired if the Plaintiff succeeds on its claims.

For purposes of intervention as of right under NRCP 24(a)(2), the applicant must have a significantly protectable interest in the subject matter of the action and must be situated such that the disposition of the action may impair or impede the applicant's ability to protect that interest. PEST Comm. v. Miller, 648 F.Supp.2d 1202, 1211-12 (D. Nev. 2009). The applicant satisfies these requirements if: (1) the applicant asserts an interest that is protected under federal or state law; and (2) there is a relationship between the applicant's protected interest and the plaintiff's claims such that the applicant will suffer a practical impairment of its interest if the plaintiff succeeds on its claims. Id. at 1212. When the plaintiff seeks declaratory relief that statutes are unconstitutional, the applicant is entitled to intervene to defend the validity of the statutes if the applicant's protected interest would be impaired, as a practical matter, by a declaration that the statutes are unconstitutional. Cal. ex rel. Lockyer v. United States, 450 F.3d 436, 441-45 (9th Cir. 2006).

In the context of defending the validity of state statutes, courts have recognized that a state legislature may have an independent "legal interest in defending the constitutionality of [its] laws" that is separate and distinct from the interests of state officials who are charged with administering those

laws. Ne. Ohio Coal. for Homeless v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006). For example, in a case challenging the constitutionality of Ohio's election laws where Ohio's Secretary of State was named as the defendant, the Sixth Circuit allowed the State of Ohio and its General Assembly to intervene in the case because "the Secretary's primary interest is in ensuring the smooth administration of the election, while the State and General Assembly have an independent interest in defending the validity of Ohio laws and ensuring that those laws are enforced." Id. at 1008.

In this case, the Legislature has an independent legal interest in defending the constitutionality of S.B. 254 and all subsequent legislation impacting the Legislature's chosen method of allocating tax revenue that is separate and distinct from the interests of the Department of Taxation and the State Treasurer who are charged with administering those laws, and the Legislature's interests will be impaired if the Plaintiff succeeds on its claims. The Plaintiff is challenging decisions made by the Legislature in enacting legislation to distribute money throughout the State of Nevada. As a consequence, this case strikes at the heart of one of the most vital components of the legislative function—fiscal policy determinations to manage the collection and distribution of taxes in the state. Because the Legislature has a right to defend its carefully considered tax schemes, the Legislature has a substantial interest in the subject matter of this action which will be impaired if the Legislature is not permitted to intervene.

This case raises important legal issues which could have significant and far-reaching ramifications that could severely impact the Legislature's role in making policy decisions regarding taxation. Since the initial creation of a consolidated tax system, the Legislature has continuously revisited the issue and worked in concert with counties, local governments, analysts, lobbyists and various other individuals and groups with the goal of maintaining a reasonable distribution method to allocate certain tax revenues throughout the State for the benefit of its citizens. If the Court were to declare that S.B. 254 and all the related legislation which built upon the initial framework established by S.B. 254 are unconstitutional,

such a declaration would call into doubt the constitutionality of at least fifteen years of tax allocations simply based on one local government's claim that it did not receive its fair share of money. Because the Legislature has a right to defend the continued validity of Nevada's tax policies and CTX allocation determinations, the Legislature has established that it has significantly protectable interests in the subject matter of this action which will be impaired if the Plaintiff succeeds on its claims.

(b) The Legislature's interests are not adequately represented by existing parties.

When an applicant has sufficient interests to support intervention as of right under NRCP 24(a)(2), the applicant must be permitted to intervene unless the applicant's interests are adequately represented by existing parties. Am. Home Assurance, 122 Nev. at 1241; Lundberg v. Koontz, 82 Nev. 360, 362-63 (1966). The applicant must satisfy only a minimal burden to demonstrate that existing parties do not adequately represent its interests. Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 823 (9th Cir. 2001). The applicant need only show that representation by existing parties may be inadequate, not that it will be inadequate. Id. Courts typically consider three factors when determining whether existing parties adequately represent the interests of a proposed intervenor: (1) whether the interests of existing parties are such that they will undoubtedly make all of the proposed intervenor's arguments; (2) whether existing parties are capable and willing to make such arguments; and (3) whether the proposed intervenor would offer any necessary elements to the proceeding that existing parties would neglect. PEST Comm., 648 F.Supp.2d at 1212.

As a general rule, there is a presumption that a state official adequately represents the interests of *private* parties in defending the constitutionality of state statutes because the state official is acting in a representative capacity on behalf of the citizens of the state and because the state official and the private parties share the same ultimate objective, which is to uphold the statutes against constitutional attack. Id. at 1212-13. This presumption, however, does not apply here because the Legislature is a governmental entity, not a private party, and the Legislature has an independent legal interest in defending the

constitutionality of the CTX system that is separate and distinct from the interests of the Department of Taxation and the State Treasurer who are charged with administering those laws. See Ne. Ohio Coal., 467 F.3d at 1008.

The Department of Taxation has an undeniable interest in ensuring the smooth administration of the CTX system.[3] To that end, the Department of Taxation is concerned with the validity of Nevada laws providing for the distribution of CTX pursuant to statutory formulas. Similarly, the State Treasurer is entrusted with disbursing public money and is therefore also concerned with the validity of the existing method of CTX allocations.[4] However, the Plaintiff's claims that the Legislature's actions with regard to establishing a tax distribution system are unconstitutional could have significant and far-reaching ramifications on the Legislature's ability to make fiscal policy and tax decisions which affect the entire state and go far beyond the interests of the agencies.

If the Plaintiff were to succeed on its claims that the statutory CTX system is unconstitutional, both on its face and in application, it would unravel fifteen years of consolidated tax distributions in Nevada, and the Legislature would have to drastically change the way it performs its function of enacting tax laws. Given that the Plaintiff's constitutional claims are directed at an extremely vital part of the Legislature's function—forming fiscal and tax policies and determining how, when and where the State should spend its tax revenues—neither the Department of Taxation nor the State Treasurer are in a position to adequately represent the official interests of the Legislature. Under such circumstances, the Legislature's interests are not adequately represented by existing parties, and the Legislature is entitled to intervention as of right under NRCP 24(a)(2). See Ne. Ohio Coal., 467 F.3d at 1007-08 (allowing

[3] The main provisions for the distribution of proceeds from the Local Government Tax Distribution Account to local governments are set forth in NRS 360.600 to 360.740, inclusive. The Department of Taxation is authorized to "exercise the specific powers enumerated in [chapter 360 of NRS] and, except as otherwise provided by law, may exercise general supervision and control over the entire revenue system of the State." See NRS 360.200.

[4] See NRS 226.110(5) (the State Treasurer "[s]hall disburse the public money upon warrants drawn upon the Treasury by the State Controller, and not otherwise").

intervention as of right where "the Secretary's primary interest is in ensuring the smooth administration of the election, while the State and General Assembly have an independent interest in defending the validity of Ohio laws and ensuring that those laws are enforced.").

B. Permissive intervention.

The provisions of NRCP 24(b) provide that permissive intervention may be granted under the following circumstances:

> Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Permissive intervention lies within the discretion of the district court. See 6 Moore's Federal Practice § 24.10 (3d ed. 2004). The decision whether to grant permissive intervention is controlled by considerations of equity, judicial economy and fairness. Id. Permissive intervention ordinarily should be granted to a governmental agency where the legal issues in the case may have a substantial impact on "the maintenance of its statutory authority and the performance of its public duties." SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940). Thus, where the governmental agency's interest in the case "is a public one" and it intends to raise claims or defenses concerning questions of law involved in the main action, permissive intervention should be granted, especially when the agency's intervention "might be helpful in [a] difficult and delicate area." United States v. Local 638, Enter. Ass'n of Pipefitters, 347 F. Supp. 164, 166 (S.D.N.Y. 1972) (quoting SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940)).

In this case, considerations of equity, judicial economy and fairness militate in favor of the Court granting permissive intervention to the Legislature. The Plaintiff's claims attack a significant tax scheme enacted by the Legislature and which affects the entire State of Nevada and its citizens. The legal analysis of the CTX system in this case, and the resulting judicial determinations, will have a substantial impact on the scope of the Legislature's constitutional authority and the performance of one of its core

functions of making tax decisions. The Department of Taxation and the State Treasurer are not in a position to adequately represent the official interests of the Legislature, and neither Defendant can offer the Legislature's unique insight into the historical background of the CTX system or a complete overview of the factors supporting the validity and enforceability of its statutory provisions. By permitting the Legislature to intervene, the Court would be facilitating a more comprehensive and thorough presentation of the controlling law and a better understanding of the issues, and the Court would be ensuring that the views of the Legislature are fairly and adequately represented and are not prejudiced by this case. In addition, because this case is in its earliest stages, intervention will not unduly delay the proceedings or prejudice the rights of existing parties. Therefore, even assuming that the Legislature does not qualify for intervention as of right under NRCP 24(a)(1) and (a)(2), the Court should exercise its discretion and allow the Legislature to intervene under the standards for permissive intervention set forth in NRCP 24(b).

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CONCLUSION

Based upon the foregoing, the Legislature respectfully requests that the Court enter an order granting the Legislature's Motion to Intervene.

The undersigned hereby affirm that this document does not contain "personal information about any person" as defined in NRS 239B.030 and 603A.040.

DATED: This 3rd day of August, 2012.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: _____

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ADDENDUM

NRCP 24. INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

NRS 218F.720 Authority to provide legal representation in actions and proceedings; exemption from fees, costs and expenses; standards and procedures for exercising unconditional right and standing to intervene; payment of costs and expenses of representation.

1. When deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding, the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the Legislative Commission is scheduled to be held, may direct the Legislative Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action or proceeding before any court, agency or officer of the United States, this State or any other jurisdiction, or any political subdivision thereof. In any such action or proceeding, the Legislature may not be assessed or held liable for:

(a) Any filing or other court or agency fees; or

(b) The attorney's fees or any other fees, costs or expenses of any other parties.

2. If a party to any action or proceeding before any court, agency or officer:

(a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

(b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,

↪ the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading,

brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

4. The provisions of this section do not make the Legislature a necessary or indispensable party to any action or proceeding unless the Legislature intervenes in the action or proceeding, and no party to any action or proceeding may name the Legislature as a party or move to join the Legislature as a party based on the provisions of this section.

5. The Legislative Commission may authorize payment of the expenses and costs incurred pursuant to this section from the Legislative Fund.

6. As used in this section:

(a) "Action or proceeding" means any action, suit, matter, cause, hearing, appeal or proceeding.

(b) "Agency" means any agency, office, department, division, bureau, unit, board, commission, authority, institution, committee, subcommittee or other similar body or entity, including, without limitation, any body or entity created by an interstate, cooperative, joint or interlocal agreement or compact.

(c) "Legislature" means:

(1) The Legislature or either House; or

(2) Any current or former agency, member, officer or employee of the Legislature, the Legislative Counsel Bureau or the Legislative Department.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **3rd** day of August, 2012, I served a true and correct copy of the Legislature's Motion to Intervene by depositing the same in the United States Mail, postage prepaid, addressed to the following:

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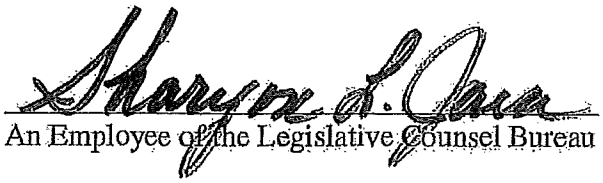

An Employee of the Legislative Counsel Bureau

Exhibit 1

Nevada Legislature

Exhibit 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation,

Plaintiff,

vs.

STATE OF NEVADA ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, inclusive,

Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

NEVADA LEGISLATURE'S
PROPOSED ANSWER TO PLAINTIFF'S COMPLAINT

PROPOSED ANSWER TO PLAINTIFF'S COMPLAINT

Proposed Intervenor-Defendant, the Legislature of the State of Nevada (Legislature), by and through its counsel, the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits pursuant to NRCP 24(c) the Legislature's proposed Answer to Plaintiff's Complaint, which Plaintiff filed on June 6, 2012.

ADMISSIONS AND DENIALS OF THE ALLEGATIONS

PARTIES

¶ 1. The Legislature admits the City of Fernley is a Nevada municipal corporation located in Lyon County, Nevada. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 and denies them.

¶¶ 2-3. The Legislature admits the allegations in paragraphs 2-3.

BACKGROUND

¶¶ 4-18. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 4-18 and denies them.

¶ 19. The Legislature denies the allegations in paragraph 19.

FIRST CLAIM FOR RELIEF

(Denial of Equal Protection in Violation of Section 1 of the Fourteenth Amendment to the United States Constitution)

¶¶ 20-27. The Legislature denies the allegations in paragraphs 20-27.

SECOND CLAIM FOR RELIEF

(Violation of the Separation of Powers Clause of the Nevada Constitution)

¶¶ 28-36. The Legislature denies the allegations in paragraphs 28-36.

THIRD CLAIM FOR RELIEF

(Creation of a Special Law in Violation of Article 4, Section 20 of the Nevada Constitution)

¶¶ 37-43. The Legislature denies the allegations in paragraphs 37-43.

FOURTH CLAIM FOR RELIEF

(Violation of Article 4, Section 21 of the Nevada Constitution)

¶¶ 44-49. The Legislature denies the allegations in paragraphs 44-49.

FIFTH CLAIM FOR RELIEF

(Denial of Due Process in Violation of Section 1 of the 14th Amendment to the United States Constitution)

¶¶ 50-57. The Legislature denies the allegations in paragraphs 50-57.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief)

¶¶ 58-64. The Legislature denies the allegations in paragraphs 58-64.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief)

¶¶ 65-70. The Legislature denies the allegations in paragraphs 65-70.

AFFIRMATIVE DEFENSES

1. The Legislature pleads as an affirmative defense that the Complaint fails to state a claim upon which relief can be granted.

2. The Legislature pleads as affirmative defenses that Plaintiff lacks capacity to sue and standing; that Plaintiff's claims do not present a justiciable case or controversy; that Plaintiff's claims are not ripe for adjudication; and that the Court lacks jurisdiction of the subject matter.

3. The Legislature pleads as an affirmative defense that Plaintiff's claims are barred by the doctrine of immunity, including, without limitation, sovereign immunity, official immunity, discretionary function immunity, absolute immunity and qualified immunity.

4. The Legislature pleads as affirmative defenses that Plaintiff's claims are barred by the statute of limitations, laches, estoppel and waiver.

5. The Legislature pleads as an affirmative defense that, pursuant to NRS 218F.720, the Legislature may not be assessed or held liable for any filing or other court fees or the attorney's fees or other fees, costs or expenses of any other parties.

6. The Legislature reserves its right to plead, raise or assert any additional affirmative defenses which are not presently known to the Legislature, following its reasonable inquiry under the circumstances, but which may become known to the Legislature as a result of discovery, further pleadings, or the acquisition of information from any other source during the course of this litigation.

PRAYER FOR RELIEF

The Legislature prays for the following relief:

1. That the Court enter judgment in favor of the Legislature and against Plaintiff on all claims and prayers for relief directly or indirectly pled in the Complaint;

2. That the Court enter judgment in favor of the Legislature and against Plaintiff for the Legislature's costs and attorney's fees as determined by law; and

3. That the Court grant such other relief in favor of the Legislature and against Plaintiff as the Court may deem just and proper.

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AFFIRMATION

The undersigned hereby affirm that this document does not contain "personal information about any person" as defined in NRS 239B.030 and 603A.040.

DATED: This 3rd day of August, 2012.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: _____

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CITY OF FERNLEY, NEVADA, a Nevada municipal corporation, Plaintiff, v. STATE OF NEVADA, ex rel. THE NEVADA DEPARTMENT OF TAXATION; THE HONORABLE KATE MARSHALL, in her official capacity as TREASURER OF THE STATE OF NEVADA; and DOES 1-20, Inclusive, Defendants.	**Case No.: 12 OC 00168 1B** **Dept. No.: I** **MOTION TO DISMISS**

Defendants, State of Nevada, ex rel. its Department of Taxation and Kate Marshall, in her official capacity as Treasurer of the State of Nevada, by and through counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, Gina Session, Chief Deputy Attorney General, and Andrea Nichols, Senior Deputy Attorney General, move this court for its order dismissing this action.

. . . .

. . . .

This Motion is made pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure (NRCP), and is based upon the following Memorandum of Points and Authorities, together with all other papers, pleadings and documents on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

In 1995, the Nevada Legislature adopted Senate Concurrent Resolution No. 40 (File No. 162, *Statutes of Nevada* 1995, pages 3034-3036), which directed the Legislative Commission to conduct an interim study of the laws relating to the distribution among local governments of revenue from state and local taxes. NEVADA LEGISLATIVE COUNSEL BUREAU BULLETIN NO. 97-5, Abstract at 3 (January 1997). The Commission appointed a subcommittee which adopted six recommendations for proposed legislation. *Id.* The first recommendation was that the 1997 Session of the Nevada Legislature consider legislation providing for a new formula for the distribution among the local governments within a county of: the Basic City/County Relief Tax; Supplemental City/County Relief Tax; Tax on Liquor; Tax on Tobacco; Real Property Transfer Tax; and Motor Vehicle Privilege Tax. *Id.* Summary of Recommendations at 1. The second recommendation was that the Legislature consider legislation that would provide for appropriate adjustments to the bases of the formula for revenue distribution of one or more local governments when previous functions are taken over or no longer exist. *Id.* The subcommittee produced three Bill Draft Requests. *Id.* at 115-181.[1] The 1997 Session of the Nevada Legislature passed SB 254; the resulting legislation is referred to as the C-Tax system.

The City of Fernley's Complaint concerns C-Tax distributions made pursuant to NRS 377.057, 360.680 and 360.690. Plaintiff's Complaint p. 3, ll. 3-12. In its Complaint the City of Fernley alleges that it does not receive C-Tax distributions in an amount received by other cities with comparable populations. *Id.* at p. 4, ll. 1-15. However, the City of Fernley's Complaint fails to account for the services provided by other cities with comparable populations, such as public safety. For example, in 2011, the City of Elko, which has a

[1] BDR 32-187, BDR 17-193 and BDR 32-314.

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population comparable to the City of Fernley, incurred public safety costs in the amount of $8,294,481.00. See chart attached as Exhibit "1." On the other hand, the City of Fernley had no public safety costs.

Pursuant to NRS 360.740, when the City was incorporated it could have requested additional C-Tax revenues if it agreed to provide police protection and at least two of the following: fire protection; construction; maintenance and repair of roads; or, parks and recreation. The City of Fernley did not agree to provide services when it incorporated. Further, pursuant to NRS 354.598747, the distribution received under NRS 360.680 and 360.690 is recalculated if the City assumes the functions of another local government.

As previously stated one of the purposes behind the C-Tax legislation was to provide for appropriate adjustments to the formula for revenue distribution to a local government that takes over certain functions. Conspicuously absent from the City of Fernley's Complaint is any comparison of the services and functions the City of Fernley provides in comparison to the services and functions provided by other cities with comparable populations.

In its first and fifth claims for relief, the City of Fernley alleges violations of the Fourteenth Amendment to the United States Constitution. In its second, third, and fourth claims for relief, the City of Fernley alleges violations of the Nevada Constitution. In its sixth and seventh claims for relief, the City of Fernley seeks declaratory and injunctive relief based upon alleged violations of both the United States Constitution and the Nevada Constitution.

II. ARGUMENT

A. The Standard of Review

Plaintiff's Complaint should be dismissed pursuant to NRCP Rule 12(b)(5), which states in relevant part,

> (b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive *pleading thereto if one is required, except that the following* defenses may at the option of the pleader be made by motion . . . (5) failure to state a claim upon which relief can be granted . . .

. . . .

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A complaint should be dismissed for failure to state a claim "if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (Nev. 2008). The pleadings must be liberally construed, and all factual allegations in the complaint accepted as true. *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (Nev. 2000).

Tax statutes such as those at issue in this case enjoy a presumption of constitutionality. The analysis of a tax statute,

> begins with the presumption of validity which clothes statutes enacted by the legislature. All acts passed by the legislature are presumed valid until the contrary is clearly established. In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the constitution is clearly violated. Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.

List v. Whisler, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (Nev. 1983) (citations omitted).

Thus, the C-Tax system at issue here enjoys the presumption of validity. Plaintiff, the City of Fernley, has the burden of proving a clear Constitutional violation. Defendants respectfully submit that the City of Fernley cannot meet this burden.

B. PLAINTIFF HAS NO STANDING TO ASSERT VIOLATIONS OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

In its first claim for relief, the City of Fernley claims a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution ("U.S. Const. amend. XIV"). In its fifth claim for relief, the City of Fernley claims a violation of the due process clause of the U.S. Const. amend. XIV. However, the City of Fernley has no standing to bring such claims against the State.

The City of Fernley is a political subdivision of the State of Nevada. NRS 41.0305. As such the City of Fernley has only those powers delegated to it by the State. In *Nevada v. County of Douglas,* 90 Nev. 272, 279-280, 524 P.2d 1271, 1276 (Nev. 1974), the Nevada Supreme Court made clear that, "a political subdivision of the State of Nevada, may not

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invoke the proscriptions of the Fourteenth Amendment in opposition to the will of its creator." In that case Douglas County sought to challenge its allotted payment to the Tahoe Regional Planning Agency, arguing that the Tahoe Regional Planning Compact violated both the due process and equal protection clauses of the U.S. Const. amend. XIV. Relying on U.S. Supreme Court precedent, the Nevada Supreme Court found that a political subdivision is created by the state and possess only the powers given to it by the state. The Federal Constitution does not protect a political subdivision from any action taken by the state no matter how injurious or oppressive. For this reason Douglas County lacked standing to bring a challenge to state action based upon the Fourteenth Amendment.

The Nevada Supreme Court relied on *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). In that case Pennsylvania sought to consolidate the cities of Allegheny and Pittsburgh. Plaintiffs, who were property owners in the City of Allegheny, claimed a deprivation of property without due process of law, since the consolidation would subject them to the burden of additional taxes and cause a large depreciation in the value of their property. *Id.* at 168 and 177. The Supreme Court explained,

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. . . .Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. . . .Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.

Id. at 178-79.

Another case relied on by the Nevada Supreme Court was *Williams v. Baltimore*, 289 U.S. 36 (1933). In that case Maryland enacted a law exempting the Washington, Baltimore and Annapolis Electric Railroad Company from all State taxes and charges. *Id.* at 38. The City of Baltimore challenged the exemption claiming a denial of equal protection in violation

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of the Fourteenth Amendment. *Id.* at 39. The Supreme Court ruled against the city, stating, "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator."

Here the City of Fernley is a municipal corporation and a political subdivision of the State of Nevada. The City has no powers other than those granted to it by the State. It has no rights under the Federal Constitution as against the State. Thus, Plaintiff, the City of Fernley, has no standing to bring a claim against the State alleging violations of U.S. Const. amend. XIV. Accordingly, dismissal of Plaintiff's First and Fifth claims for relief is warranted.[2]

C. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR VIOLATION OF THE SEPARATION OF POWERS CLAUSE OF THE NEVADA CONSTITUTION.

In its second claim for relief, the City of Fernley alleges a violation of the Separation of Powers Clause of the Nevada Constitution. The City of Fernley alleges, "[T]he C-Tax system, which is administered by the executive branch of the state government, is set up so that the legislative authority over the C-Tax system is abdicated to and exercised by the executive branch of state government." Complaint p. 6, ll. 12-14. Yet the City of Fernley admits that the C-Tax system is not designed to allow the Department to make any meaningful adjustments. *Id.* at p. 4, ll. 16-21. Here, the legislature passed a tax law; the Department of Taxation and the Treasurer are simply performing their duties to execute the law as required by the Nevada Constitution. Thus, there is no violation of the separation of powers clause.

Art. 3, § 1 of the Nevada Constitution states, "[T]he powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution." Article 4

[2] The City of Fernley's claimed violation of the United States Constitution is also precluded by the principles articulated in *Madera v. SIIS*, 114 Nev. 253, 956 P.2d 117 (Nev. 1998).

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of the Nevada Constitution details the powers of the legislative department which include enacting laws. Nev.Const. Art. 4. § 23. Article 5 of the Nevada Constitution details the powers of the executive department which include the responsibility for execution of laws. Nev.Const. Art. 5. § 7. The Treasurer is also charged with performing such other duties as may be prescribed by law. Nev.Const. Art. 5. § 22. In 1997, the legislature enacted SB 254 which gave us the C-Tax system the City of Fernley complains of. The statutes at issue provide specific formula for the calculation of taxes to be distributed to local governments.

In *State of Nevada ex rel. Brennan v. Bowman,* 89 Nev. 330, 512 P.2d 1321 (Nev. 1973), the Nevada Supreme Court considered a challenge to a revenue bond law enacted by Clark County. The Nevada Supreme Court found that the law did not unlawfully delegate legislative authority in contravention of Nev.Const. Art. 3 § 1 because adequate standards were specified in the law, the purpose was stated with particularity, and the legislative guides were clear for the counties to follow. *Id.* at 334, 1323. Similarly, in *City of Las Vegas v. Mack*, 87 Nev. 105, 481 P.2d 396 (Nev. 1971), a shop-owner argued that the County-City Relief Tax law unconstitutionally delegated the legislative power to impose a tax to boards of county commissioners. The Nevada Supreme Court again found no constitutional violation because the statute left nothing to the discretion of the county commissioners. *Id.* at 109, 398.

In this case the C-Tax allocations, codified at NRS 377.057, 360.680 and 360.690, provide clear direction to the Department of Taxation in the calculation of taxes to be distributed to local governments. The City of Fernley's Complaint fails to allege that either the Department or the Treasurer have done anything other than execute the laws enacted by the Legislature. Further, in its Complaint, the City of Fernley admits that the C-Tax system is not designed to allow the Department to make any meaningful adjustments. *Id.* at p. 4, ll. 16-21. Thus, the statute is clear and leaves nothing to the discretion of the Department of Taxation or the Treasurer.

In compliance with the Nevada Constitution, the legislature enacted a statute and the executive branch is executing the statute. The City of Fernley has failed to state a claim for

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violation of the Separation of Powers Clause of the Nevada Constitution. Accordingly, dismissal of Plaintiff's second claim for relief is warranted.

D. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR VIOLATION OF ARTICLE 4 SECTION 20 OF THE NEVADA CONSTITUTION.

In its third claim for relief, the City of Fernley alleges that, "as administered by Defendants, the C-Tax system operates as a local or special law with respect to Fernley, by treating Fernley significantly differently for tax collection and distribution purposes than other local governments." Complaint, p. 7, ll. 6-8. The City claims that Fernley and its residents are net exporters of tax revenues into the C-Tax system and receive substantially less in C-Tax distributions than are submitted in C-Tax collections. *Id.* at ll. 4-5. The City of Fernley's argument fails to take into account the fact that taxes from the City of Fernley are distributed to Lyon County, and Lyon County provides services, such as law enforcement, for the entire County which includes the City of Fernley. If the City of Fernley would agree to assume some government functions currently performed by the County, the City of Fernley could seek additional distributions of C-Tax.

Art. 4. § 20 of the Nevada Constitution states in relevant part, "[T]he legislature shall not pass local or special laws in any of the following enumerated cases-that is to say: . . .For the assessment and collection of taxes for state, county, and township purposes." The tax statutes at issue in this case do not violate Art. 4 § 20 for two reasons. First, the constitutional provision at issue applies to *assessment and collection* of taxes; it does not apply to the *disbursement* of taxes. Second, the C-Tax system is not a special law either on its face or as applied to the City of Fernley.

Nevada cases discussing the assessment and collection of taxes for purposes of Art. 4 § 20 primarily concern legislation directing counties to levy taxes for particular local purposes. *Gibson v. Mason,* 5 Nev. 283 (Nev. 1869) concerned legislation directing Ormsby County to issue bonds to the Virginia and Truckee Railroad Co., and to levy a tax for the interest on and redemption of those bonds. The Nevada Supreme Court explained,

. . . .

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> By this provision it was evidently intended simply to inhibit local or special laws, respecting or regulating the manner or mode of assessing and collecting taxes.
>
> Assessment, as used in this section, evidently has reference to the duties of the subordinate officer, known under our laws as an Assessor, whose duty it is to ascertain the value of the taxable property, and determine the exact amount which each parcel or individual is liable for. The word "for," too, must mean--with respect to, or with regard to, which is a definition given to it by lexicographers--and thus the language of the section will read: With respect to or regard to the assessment and collection of taxes for State, county, and township purposes. The law under consideration, however, contains no provision whatever respecting the assessment or collection of the tax complained of, in the sense in which those words are employed in the Constitution. It simply directs the levy of the tax, and in no way regulates the manner in which the proportion of each person is to be ascertained that is assessed; but this, and the method of collecting, is left to be governed by the general revenue law.
>
> It clearly could not have been intended by the framers of the Constitution to require a general law for the levy of a tax for a special purpose in a county. As in a case of this kind, when no county but that of Ormsby is required to levy a tax, and this for a special purpose, and the amount to be levied is necessarily fixed--how could a general law be enacted to meet the necessities of the case, without requiring all the counties of the State to levy a like tax? It could not, with the construction which counsel for respondent place upon this section.
>
> We are clearly of opinion that the constitutional provision simply prohibits special legislation regulating those acts which the assessors and collectors of taxes generally perform, and which are denominated "assessment" and "collection of taxes;" and that it does not inhibit the Legislature from authorizing or directing the County Commissioners from levying a special tax by the passage of a local law.

Id. at 14.

This principle was relied on in *Washoe County Water Conservation Dist. v. Beemer*, 56 Nev. 104, 107, 45 P.2d 779, 782 (Nev. 1935) (finding legislation requiring Washoe County to issue bonds and levy a tax for payment thereof to pay for improvements along the Truckee River, "was not a law for the assessment and collection of taxes, as those words are used in said section 20."); *Cauble v. Beemer*, 64 Nev. 77, 87, 177 P.2d 677, 682 (Nev. 1947) (finding legislation requiring Washoe County to issue bonds and levy a tax to pay such bonds for improvements to Washoe General Hospital clearly, "is not a law for the assessment and

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collection of taxes, as those words are used in Sec. 20, Art. IV of the Constitution of the State of Nevada."); and, *City of Reno v. County of Washoe*, 94 Nev. 327, 335, 580 P.2d 460, 465 (Nev. 1978) (upholding Washoe County Airport Authority power to levy and collect taxes, and to fix a rate of levy, subject to the approval of Washoe County).

Plaintiff's Complaint concerns tax revenue comprised of six (6) taxes collected in Nevada. The taxes are consolidated by the Department and distributed by the Treasurer. Complaint, p. 2, ll. 17-25. Plaintiff's Complaint does not, however, challenge the assessment and collection of these taxes. Rather, the City Fernley challenges the distributions made to counties, local governments and special districts. The City of Fernley claims it, "has been rebuffed in its efforts to obtain a larger share of the distribution to Lyon County." *Id.* at p. 4, ll. 22-23. Plaintiff further alleges its, "inability to obtain any adjustment to its C-Tax distribution severely limits Fernley's ability to operate and plan for its future." *Id.* at p. 5, ll. 1-2. Since the City of Fernley's challenge concerns the *distribution* of taxes rather than the *assessment and collection* of taxes, Nev.Const. Art. IV, § 20 is not implicated.

Even if Plaintiff's Complaint concerned the assessment and collection of taxes, the legislation at issue is not a special or local law because it is applied to Fernley in the same manner as any other city incorporated after its passage. In *Nevada v. Irwin*, 5 Nev. 111, 6 (Nev. 1869), the Nevada Supreme Court explained that general laws, "are those which relate to or bind all within the jurisdiction of the law-making power, limited as that power may be in its territorial operations, or by constitutional restraints. Private or special statutes relate to certain individuals or particular classes of men." The C-Tax system is not a statute that relates only to the City of Fernley. The C-Tax system is applied throughout the State of Nevada.

In *Damus v. County of Clark*, 93 Nev. 512, 569 P.2d 933 (Nev. 1977), the Plaintiff argued that a law allowing any county with a population in excess of 200,000 to issue special obligation bonds violated Nev.Const. Art. IV, § 20 because it only applied to Clark County. The Court first noted that, "every act passed by the legislature is presumed to be constitutional." *Id.* at 516, 935. The Court then found, "[T]he fact the law might apply only to

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Clark County is of no consequence, for if there were others, the statute would then also apply. It therefore conforms to the constitutional mandates that there shall be no local or special laws, and that general laws shall have uniform operation. *Id.* at 518, 936 (citations omitted).

Here, the statutes at issue are not unconstitutional because the C-Tax laws apply the same way to all local governments. The City of Fernley alleges that it is the only municipality to incorporate in Nevada since the C-Tax system was implemented in 1997. But there is no allegation and no facts tending to show that the law would apply differently to any other municipality that incorporated after 1997.

The City of Fernley has the burden to demonstrate that the law is unconstitutional. Nev.Const. Art. IV, § 20 is not implicated since the City of Fernley's challenge concerns the *distribution* of taxes and not the *assessment and collection* of taxes. Even if Nev.Const. Art. IV, § 20 is applicable, there are simply no facts that would tend to show that the C-Tax is a special law with respect to the City of Fernley because the legislation is equally applicable to all local governments. Accordingly, dismissal of Plaintiff's third claim for relief is also warranted.

E. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR VIOLATION OF ARTICLE 4 SECTION 21 OF THE NEVADA CONSTITUTION.

In its fourth claim for relief, the City of Fernley claims the C-Tax system violates Nev.Const. Art. IV, § 21, which states, "[I]n all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State." As a general rule, if a statute is either a special or local law or both, and comes within one or more of the cases enumerated in Nev.Const. Art. IV, § 20, such statute is unconstitutional; if the statute is special or local or both, but does not come within any of the cases enumerated in Nev.Const. Art. IV, § 20, then its constitutionality depends upon whether a general law can be made applicable. *Damus v. Clark County*, 93 Nev. 512, 517, 569 P.2d 933, 936 (Nev. 1977).

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As set forth more fully above, the C-Tax is not a special law with respect to the City of Fernley because the legislation is applied the same way to all local governments. The City of Fernley receives smaller C-Tax distributions than other cities with similar sized populations because the City of Fernley does not provide similar services and functions.

Even if this Court determines that the C-Tax laws at issue are local or special, the laws are still permissible if a general law cannot be made applicable. In making this determination the Court looks to whether the challenged law best serves the interests of the people of the state, or such class or portion as the legislation is intended to affect, and such legislation will be upheld where general legislation is insufficient to meet the particular needs of a particular situation. *Clean Water Coalition v. The M Resort, LLC,* 255 P.3d 247, 259 (Nev. 2011).

Here, the clear purpose of the C-Tax is to distribute State revenue to government entities that provide needed services such as law enforcement and fire protection. Clearly, such legislation serves the best interests of the people of the State of Nevada. Accordingly, even if the C-Tax legislation is found to be special or local legislation, it must be upheld since a general law cannot be made applicable for purposes of Nev.Const. Art. IV, § 21. For these reasons, the City of Fernley's fourth claim for relief must also be dismissed.

F. PLAINTIFF IS NOT ENTITLED TO DECLARATORY RELIEF.

In its sixth claim for relief, the City of Fernley requests, "declarations from the Court to resolve their respective rights under the United States and Nevada Constitutions." Complaint, p. 9, ll. 24-26. Nevada's Declaratory Judgment Act is set forth in NRS Chapter 30. The act allows a person whose rights, status or legal relations are affected to ask the Court to determine a question of construction or validity arising under an instrument, statute, ordinance, contract, will, trust, or the like. NRS 30.040. Defendants have no objection to the Court making declarations concerning the construction and validity of Nevada's C-Tax system. However, Defendants respectfully assert that any such declaration should find that the C-Tax is not unconstitutional under either the United States or Nevada Constitutions.

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G. PLAINTIFF IS NOT ENTITLED TO INJUNCTIVE RELIEF.

In its seventh claim for relief, the City of Fernley seeks an injunction preventing Defendants from making distributions under Nevada's C-Tax system. Complaint, p. 10, ll. 17-20. The cases in which an injunction may be granted are set forth in NRS 33.010 which states,

> An injunction may be granted in the following cases:
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Defendants respectfully submit that this is not such a case. Accordingly, dismissal of the City of Fernley's seventh claim for relief is also warranted.

III. CONCLUSION

In light of the foregoing, Defendants, State of Nevada, ex rel. its Department of Taxation and Kate Marshall, in her official capacity as Treasurer of the State of Nevada, respectfully request that this Court enter its order dismissing Plaintiff's claims against them.

DATED this 3rd day of August, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on this 3rd day of August, 2012, I served a copy of the foregoing **MOTION TO DISMISS**, by mailing a true copy, postage prepaid, to:

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EXHIBIT 1

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