SJR 15 - 2011

Introduced on: Mar 28, 2011

By Revenue

Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Effect on Local Government: *No.*
Effect on State: *No.*

Past Hearings

Senate Revenue	Apr-05-2011	No Action
Senate Revenue	Apr-14-2011	No Action
Senate Revenue	May-18-2011	No Action
Senate Revenue	May-20-2011	Do pass
Assembly Legislative Operations and Elections	Jun-05-2011	Do pass

Votes

Senate Final Passage	May-28	Yea 13,	Nay 8,	Excused 0,	Not Voting 0,	Absent 0
Assembly Final Passage	Jun-06	Yea 27,	Nay 15,	Excused 0,	Not Voting 0,	Absent 0

Bill Text (PDF) As Introduced 2011 Statutes of Nevada, File No. 44

Bill History

Mar 28, 2011 Read first time. Referred to Committee on Revenue. To printer.

Mar 30, 2011 From printer. To committee.

Apr 15, 2011 Waiver granted effective: 04/14/2011

May 25, 2011 From committee: Do pass.

May 26, 2011 Read second time.

May 27, 2011 Taken from General File. Placed on General File for next legislative day.

May 28, 2011 Read third time. Passed. Title approved. (Yeas: 13, Nays: 8.) To Assembly.

May 29, 2011 In Assembly.
Read first time. Referred to Committee on Legislative Operations and Elections. To committee.

Jun 06, 2011 From committee: Do pass.
Declared an emergency measure under the Constitution.
Read third time. Passed. Title approved. (Yeas: 27, Nays: 15.) To Senate.
In Senate. To enrollment.

Jun 13, 2011 Enrolled and delivered to Secretary of State.
File No. 44.

Return to 2013 Session

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

SENATE JOINT RESOLUTION NO. 15 (Enrolled)

Relates to Taxation

Summary

Senate Joint Resolution No. 15 proposes to amend the *Nevada Constitution* by repealing Section 5 of Article 10, which imposes a separate tax on the net proceeds of minerals.

Effective Date

If approved in identical form during the 2013 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2014 General Election.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

MINUTES OF THE
SENATE COMMITTEE ON REVENUE

Seventy-sixth Session
April 5, 2011

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:08 p.m. on Tuesday, April 5, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator Steven A. Horsford, Vice Chair
Senator Michael A. Schneider
Senator Moises (Mo) Denis
Senator Mike McGinness
Senator Joseph (Joe) P. Hardy
Senator Elizabeth Halseth

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Brenda Erdoes, Legislative Counsel
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Tom McCoy, American Cancer Society Cancer Action Network
Beverly J. May, Campaign for Tobacco-Free Kids
Jennifer M. Hadayia, Public Health Program Manager, Washoe County Health District
Christopher Roller, American Heart/American Stroke Association, Nevada Tobacco Prevention Association
Amy Beaulieu, Director of Tobacco Control Policy, American Lung Association; Nevada Tobacco Prevention Coalition

CHAIR LESLIE:
I will close the hearing on S.B. 386 and open the hearing on Senate Joint Resolution (S.J.R.) 15.

SENATE JOINT RESOLUTION 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

BRENDA ERDOES (Legislative Counsel):
This bill repeals section 5 of Article 10 in the Nevada Constitution and amends section 1 of Article 10 to remove a special provision for proceeds of mines from the Article on taxation in the Constitution. It also removes the reference "mines and mining claims, which shall be assessed" only as provided in section 5. It leaves the Legislature free to tax mines and mining proceeds in the manner as currently taxed. If the amendment is passed by the Seventy-sixth Session of the Nevada Legislature and the 2013 Session, the provision would be voted on by the people at the next general election or a special election. If approved by the voters, the constitutional change would be effective upon canvass, which is the third week in November after the general election. The taxes on mining would remain the same until the Legislature made a change to chapter 362 of *Nevada Revised Statutes* (NRS) to change the manner in which the taxation is applied to mining.

CHAIR LESLIE:
If this were passed this Session, nothing would change in terms of how taxes are paid by the mining industry.

MS. ERDOES:
That is correct.

CHAIR LESLIE:
If it were passed again the second time in 2013, nothing would change.

MS. ERDOES:
That is correct.

CHAIR LESLIE:
If approved by the voters, nothing would change unless the Legislature changed the way mining was taxed.

MS. ERDOES:
That is correct, NRS 362 is the statute that would implement this provision when changed by the Legislature.

CHAIR LESLIE:
Any question for Ms. Erdoes?

GUY LOUIS ROCHA:
I have provided written testimony (Exhibit M) and have also included information from David A. Johnson, professor, Portland State University (Exhibit N).

JIM HULSE:
I have provided my testimony (Exhibit O). Senate Joint Resolution 15 is an excellent and long overdue proposal to amend the Nevada Constitution. It would close the tax loopholes that mining companies have enjoyed since the founding of Nevada as a state. Since the beginning, the so-called Net Proceeds of Minerals Tax has been a shell game, working to the advantage of the mining companies and against Nevada taxpayers. The mining industry has been a sacred cow in Nevada since the beginning of our State history. Tax exemptions were written into the State Constitution at the insistence of the mining barons of 1864. Over the decades, the representatives of the voters assembled in Carson City have not dared to restrict the free-roaming exploitation and pollution of our state until now.

This may be the most important constitutional amendment that will come before this busy session of the Legislature. The Fraser Institute, based in Canada, makes annual reports to mining industry investors about the most profitable places in the world to enjoy profits in mining. According to recent Fraser records, for many years Nevada has been one of the most promising jurisdictions in which to do business because of this State's low taxes and permissive environmental regulations. In 2009-2010, Nevada was easily the best target in the United States to mine and carry the profits away.

If this Session of the Legislature can pass S.J.R. 15, and if the next Session will do the same, then the voters of Nevada will have the opportunity to express their will on this proposal in 2014. That will be the 150th anniversary of statehood. It is time to allow the voters to take another look at the privileges our predecessors gave to the mining industry.

JAN GILBERT (Progressive Leadership Alliance of Nevada):
No other industry has the protection mining has in the Nevada Constitution. Mining should be treated the same as all other businesses and should be taxed on the gross like gaming. The Net Proceeds of Minerals Tax does not register on the State's tax pie chart. It is alarming to see the cuts going on which will devastate the State. Cuts will set the Nevada System of Higher Education back many years, with professors and teachers being laid off, public education kindergarten through Grade 12 is being dismantled and human services being cut. When the Governor speaks about shared sacrifice, we should also include mining. Four of the five major mines are foreign-owned, so they take their profits back to their home countries. This legislation will level the playing field by making this change to the Constitution.

Voters will want to decide. A recent poll completed by state employees shows 75 percent of the people surveyed supported increased taxes on mining. The list of allowable deductions include advertising, consultants, company meetings, bonuses, cash awards, leases and rentals, sales and use tax, selling expenses, severance packages, travel, and management fees. This list was not intended to be used in calculating the Net Proceeds of Minerals Tax. The original intent was for the cost of getting the gold out of the ground.

SENATOR HALSETH:
What is going to happen to Eureka? Because of mining revenue, Eureka does not require State support.

MS. GILBERT:
Eureka is well-funded. In 2008, the State received $40 million from the Net Proceeds of Minerals Tax, and the mining companies posted $5.7 billion in profits. Eureka will have to manage its County as the State has done over the years.

CHAIR LESLIE:
I would like to have legal counsel respond on how the rural counties benefit from the provisions in the Constitution and how they would be affected by this legislation.

MS. ERDOES:
If S.J.R. 15 passes two sessions of the Legislature and is voted on by the people, nothing would change. The taxes would be distributed and the Net

Proceeds of Minerals Tax would be collected in the same manner that it is currently. It would be up to the next Legislature to review how monies are distributed to Eureka County and determine if changes are needed.

SENATOR HALSETH:
My concern is how this will affect the State in the future. Supporting northern Nevada is one of my priorities, and mining is important because of the revenue income. How will this negatively impact northern Nevada in the future if we change the tax structure?

CHAIR LESLIE:
Your question would be better directed to the opponents of the bill.

MS. GILBERT:
The Legislature will decide what will happen on the mining taxes after it is voted on by the people. Mining pays so little into the General Fund, yet its profits are as much as those of gaming. Every business, including mining, pays its taxes, but it is unfair to take the profits and have the State benefit so little from a nonrenewable resource that will be depleted someday. Mining should be paying while it is here,

CHAIR LESLIE:
I am going to take testimony from Las Vegas.

HUGH JACKSON:
I have done freelance writing and research on Nevada mining taxation. I have provided the Committee with a chart (Exhibit P). I support removing the mining language from the Constitution to allow the Legislature the flexibility to treat the industry the same as any other industry. Nevada's tax policy is not in the State's best interest—underestimating the importance of Nevada to the global gold mining industry while overestimating the importance of Nevada's insignificant mining tax to the company's financial performance. A world-class industry's contribution to the General Fund is about the same as the car rental tax.

I would like to cover a comparative example, Exhibit P, which will suggest why the mining tax should be stripped of its unique constitutional protection, so that Nevada can craft tax policy that better serves its people. Nevada is the Nation's leading producer of gold and one of the leading producers in the world. The first

chart, Exhibit P, shows Nevada's 5 percent Net Proceeds of Minerals Tax. About one-half goes to the State and the balance to the counties where the mineral is mined. The total mineral tax burden on Wyoming coal, oil and gas producers can be as high as 25 percent to 30 percent; Nevada's total burden is capped at 5 percent. In 1974, Wyoming changed its constitution and created a permanent mineral trust fund and mandated that a portion of the severance tax revenue be deposited in the permanent fund each year.

In 2009, Wyoming's permanent fund contributed $135.2 million to the general fund. It is more than is contributed by the State and counties combined by Nevada's entire mining tax burden. The second chart highlights the taxable value of Wyoming's minerals. In 2009, the value was seven times larger than Nevada's, but total mineral revenue of $2.37 billion was 24 times larger than Nevada's $97.6 million. The third chart, shows Wyoming's mineral industry paid $1.55 billion in 2009, about 16 times the amount derived from Nevada mineral taxation on a taxable value that was seven times as big. It is within the authority of the people of Nevada to institute a tax system that imposes a State mineral tax while also allowing counties to levy separate gross product taxes on mineral production. Nevada can establish taxes at a rate that reflects the mining industry's importance to Nevada but also the industry's obligation to Nevada—if the mining tax were taken out of the Constitution.

ERIN NEFF (ProgressNow Nevada):
We appreciate and support S.J.R. 15, which removes the mining tax from the Constitution. Nevada members support this measure and look forward to voting on it. We urge you to pass S.J.R. 15.

MICHAEL FLORES:
I appreciate your talking about a solution to Nevada's budget issue. As a student at the University of Nevada, Las Vegas, having to pay more for classes, I say mining should be able to pay more. Changing the tax in the Constitution would be best for Nevada because of the long-term effects. Many of my student friends are in support of this bill.

CRAIG STEVENS (Nevada State Education Association):
We support S.J.R. 15, which would allow the citizens of the State to benefit from the resources that are rightfully theirs. Our schools are hurting, and Nevada has the right to determine its own course when it comes to mining. The profits to mining are immense, and so are the cuts to education over the last

few years. Which resource is the State's priority, a mineral which will be depleted or the children who will lead this State to a more diversified and stronger economy?

CHAIR LESLIE:
We will move to the opponents of the bill.

TIM CROWLEY (President, Nevada Mining Association):
We are neutral on S.J.R. 15. We understand there is a misperception on what the Net Proceeds of Minerals Tax does and how it is applied in Nevada. Our intent today was to learn more about S.J.R. 15 and where it goes because of the long process of changing the Constitution.

CHAIR LESLIE:
Did you have any issue on how legal counsel described the process or the fact that the taxes would continue until or unless the Legislature changed them in statute?

MR. CROWLEY:
That was a very helpful piece of information.

SENATOR HORSFORD:
Can you or other members from the industry give us an understanding as to how the tax structure imposed on mining came to be? This is the most common question I get, and I have to tell my constituents that the Legislature does not have the authority to adjust the tax because it is part of the Constitution. The Net Proceeds of Minerals Tax is much different than the Wyoming example that we were just given.

MR. CROWLEY:
Mining taxes have been changed by this body. The first example was in 1989 when the Net Proceeds of Minerals Tax through a constitutional amendment was taken from the county property tax rate to the maximum property rate of 5 percent. This was the first time the State had a split roll and decided that one taxpayer would pay a higher property tax rate than others.

SENATOR HORSFORD:
Would you explain the rationale in that counties would receive 48 percent to 50 percent to the portion that goes to them?

MR. CROWLEY:
Prior to 1989, the counties received 100 percent of the property tax that was assessed on mines through the Net Proceeds of Minerals Tax. All property tax went directly to the counties. After the constitutional amendment, the increment between the county rate and 5 percent now goes to the State. It is about a 50 percent split because the property tax rates in rural Nevada are $2.50 per $100 of assessed valuation. Half of what we pay in the Net Proceeds of Minerals Tax goes to the local communities and half to the State.

Continuing with your first question, the other way mining taxes have been adjusted is through conventional tax changes. The 2003 tax change creating the Modified Business Tax impacted the mining industry. The tax change in 2009 through temporary increases of tax impacted the mining industry in 2010. Through conventional taxes, the Legislature is able to change the tax obligation that mining pays the State.

SENATOR HORSFORD:
If a more broad-based tax were imposed on all other industry, mining would pay the taxes accordingly.

MR. CROWLEY:
We would support a broad-based business tax.

SENATOR HORSFORD:
You talked about the Modified Business Tax. What are the specific types of taxes you pay?

MR. CROWLEY:
We pay roughly $100 million in conventional business taxes: sales taxes, Modified Business Tax, payroll tax and property taxes on our facilities. We pay another $100 million on Net Proceeds of Minerals Tax. Of the conventional business taxes, sales taxes are the largest portion we pay because of the equipment and the sophisticated machinery we purchase, whether in state or out of state.

SENATOR HORSFORD:
Even if the product is purchased out of state.

MR. CROWLEY:
Yes, sir.

SENATOR HORSFORD:
What do you say to the suggestion by Mr. Jackson that our tax on the mining industry is not comparable to Wyoming's? How would you respond to information that shows rates are not comparable?

MR. CROWLEY:
They are not comparable because coal mining companies are extracting a product that is in product form and they pass their tax obligation to the utilities, which is absorbed by the end user. Hard rock mining of gold is not comparable in that we are mining microscopic gold that is embedded in rock and then sold to get into a product form. We are unable to pass on our cost of production, overhead or taxes onto the consumer.

SENATOR HORSFORD:
Can you explain the language "until it is lost?"

CHAIR LESLIE:
I found it in the text of the repealed section 5, subsection 1, which reads "no other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost."

SENATOR HORSFORD:
What does that mean, and why is it in the Constitution?

JAMES WADHAMS (Nevada Mining Association):
It is the provision that prevents double taxation of the same property. There is value to the mineral. You can tax it once but not twice. Once it is converted into cash, its identity as a mineral is lost; it is green and not gold and could be taxed again. The reason that language was placed into the Constitution was to prevent the mineral from being taxed more than once.

SENATOR HORSFORD:
Wyoming imposes gross proceeds and a severance tax. Why is it applicable there and not in Nevada?

MR. WADHAMS:
I am not in a position to speak on the Wyoming law, but I will look into it. We have reviewed the comparable burden in various states that shows the relative burden on taxation for comparable hard rock mineral mining in the Western states. The disparity is smaller than Mr. Jackson finds by comparing coal to a hard rock mineral.

SENATOR HORSFORD:
I would like to know why Wyoming is permitted to assess both gross proceeds and a severance tax. Our constitutional language prohibits us from imposing any tax upon a mineral or its proceeds until the identity of the proceeds is lost. The Legislature is not permitted to assess anything other than a broad-based solution. The constraints on the Legislature and Executive Branch reduce our ability to make changes because of the constitutional limitation that exists. Outside of a constitutional change, the only other option would be to establish a broad-based solution where the mining industry would be treated in the same manner as all the industries in Nevada. It is important that we as a Legislature and the public understand we are limited. It is either lift this constitutional restriction which takes five to six years, or find a broad-based solution that treats the mining industry along with other companies in a way that allows you to contribute so that we do not have that restriction.

MR. CROWLEY:
That is our understanding, and that would be a process available. If you look at the 2003 Legislature and how the mining industry was taxed in a broad-based way, we would be treated like any other business if you were to pass another broad-based tax.

MR. WADHAMS:
Other pieces of the Constitution need to be identified. Article 10, section 2 states "The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation." That is a 5 percent cap on property tax on all property, so we have a constitutional cap on property tax at 5 percent. In 1987, S.J.R. No. 22 of the 64th Session addressed the ad valorem rate, which was less than 2.5 percent and the Legislature amended the Constitution to increase the property tax obligation of the mining companies to the maximum 5 percent which appears in Article 10, section 2. The problem the Legislature faces is this type of property is maxed out under other sections of the Constitution.

CHAIR LESLIE:
Gold is at an all-time high, and the voters want to know why the State cannot benefit in this situation.

MR. CROWLEY:
The State is benefiting in a variety of ways; taxes on minerals have grown by five times in the last ten years. The information I have furnished to the Committee was a chart that shows the gold prices parallel with tax contributions paid the State. I can resubmit it.

SENATOR MCGINNESS:
In Exhibit N, William M. Stewart, counsel for the San Francisco financiers who directed the largest Comstock mines, recognized no distinction between interest and ideals. Stewart saw in statehood an opportunity to remove the foremost obstacle blocking his clients' efforts to extend their control over the Comstock Lode. A major issue in the second Constitutional Convention, the tax question divided the population between those with a direct financial interest in the mines and those farmers and merchants without an interest. The guys who were able to draft the language in the Constitution won the battle. The same political issues are going on today,

MR. WADHAMS:
Article 10, section 1, subsection 2 was added to the Constitution as an exemption from property tax for shares of stock, which would have been the vehicle the investors in San Francisco would have utilized.

SENATOR HORSFORD:
My question is for staff. What is the split between the State and the counties in the Constitution?

MS. ERDOES:
It is contained in subsection 2 of the repealed section. It provides the amount of the current tax rate for local governments is applied to the taxes and the remainder, which can go to $5, then goes to the State. It cannot be changed because it is in the Constitution.

SENATOR HORSFORD:
Our obligation is to balance the budget in responsible ways because the Constitution prohibits change until a vote from the people.

CHAIR LESLIE:
I agree with those comments. This is about giving the Legislature the flexibility to adjust over time. Taxation in the Constitution in not good public policy. The hearing is closed on S.J.R. 15 and I will open the hearing on Senate Bill 493.

SENATE BILL 493: Creates the Mining Oversight and Accountability Commission. (BDR 32-1152)

JOE REEL (Deputy Fiscal Analyst):
Senate Bill 493 creates the Mining Oversight and Accountability Commission, consisting of seven members, each serving two-year terms. Three members will be appointed by the Governor, two members by the Majority Leader of the Senate and two members by the Speaker of the Assembly. The Majority Leader and Speaker will need to ensure that not more than two members are appointed from any one county and not more than two members have a direct or indirect financial interest in the mining industry.

Section 6 provides for the organizational structure of the Commission. The Commission will elect a Chair and Vice Chair from its members, who would meet once each calendar quarter on the call of the Chair. The Department of Taxation would be assigned to provide technical, clerical and operational assistance to the Commission. Section 7 establishes that the Commission shall exercise plenary oversight of the activities of each State agency, board, commission, department, division or political subdivision in connection with the taxation, operation, safety and environmental regulation of mines and mining in the State.

The Commission, within that authority, shall exercise oversight of the Nevada Tax Commission and the Department of Taxation in the administration of the Net Proceeds of Minerals Tax pursuant to NRS 362; the Division of Industrial Relations of the Department of Business and Industry in administering the provisions of NRS 512; the Commission on Mineral Resources and the Division of Minerals of the Commission, under NRS 513 and 522; the Bureau of Mines and Geology of the State of Nevada in the Public Service Division of the Nevada System of Higher Education, NRS 514; and the Division of Environmental Protection of the State Department of Conservation and Natural Resources, NRS 519A.

JAMES RICHARDSON (Nevada Faculty Alliance):
We are in support of S.J.R. 15 and the need for more oversight in the environmental area.

CHAIR LESLIE:
We will close the hearing on S.B. 493. Any other public comment?

MS. VILARDO:
I have an issue with S.B. 386. I oppose the section that earmarks any revenue.

CHAIR LESLIE:
The meeting is adjourned at 3:32 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Sheila Leslie, Chair

DATE:

SJR 15—Senate Revenue Committee, April 5, 2011

Chair, members of the committee, and committee staff. Good afternoon, I'm Guy Rocha, Nevada historian and your State Archivist for 28 years until my retirement in Feb. 2009.

I'm here today to testify on why the net proceeds tax on mining was adopted in our state constitution in 1864. Alaska is the only other state among the 13 western hard-rock mining states to have just a net proceeds tax. However, Alaska's mining tax is in statute while Nevada has the sole distinction of its mining tax found both in its constitution and statute.

EXHIBIT M Senate Committee on Revenue

Date: 4-5-11 page 1 of 9

The issue of a gross proceeds mining tax versus a net proceeds mining tax during the constitutional debates was very controversial and complex. This was the case despite the fact the constitutional delegates had used California's first constitution as its template and the Golden State had adopted a gross proceeds mining tax.

My testimony principally relies on the work of Portland State University Professor David A. Johnson in his seminal article "Industry and the Individual on the Far Western Frontier: A Cast Study of Politics and Social Change in Early Nevada."

Professor Johnson, whose doctoral dissertation in 1977 at the University of Pennsylvania focused on statemaking in the Far West, and I worked together some 30 years ago prior to his incorporating the article into a book.

Briefly, the key to understanding what happened in Carson City during the second constitutional convention in July 1864 is the fact that the Comstock Lode and Nevada was experiencing its first great economic depression.

The constitutional convention in a close vote initially passed a gross proceeds mining tax.

However, according to Prof. Johnson, "Opponents of the mining tax, mindful of the depression and its lessons, declared that such a clause not only meant certain defeat for the constitution, but, more importantly, 'the destruction and ruin of the paramount industry of our territory'."

(Please remember the operative term "paramount industry" because it has driven public policy and case law in Nevada to the present).

M-4

"No longer, they insisted, could any Nevadan maintain (as farmers, merchants, and businessman had) that their interests could be distinguished from the mining industry. The depression had taught otherwise. Indiscriminate taxation would pose an insuperable burden upon miners, large and small; it would make investment even less appealing; it would drive away needed capital—and, as delegate E. F. Dunne bluntly put it,"

'without capital, our mines are valueless. We have not, and never have had, the capital necessary to develop our mines, and we are, therefore, dependent upon foreign capital.'

"The interest of the mining industry, declared Charles DeLong, a leader of the anti-mining tax faction, was not separate and distinct from the interest of the merchant, businessman, laborer, mechanic or, for that matter, the farmer. . . . For it was the capital—capital from outside Nevada—invested in these mines that had paid Nevada's laborers, patronized the territory's merchants, and created markets for ancillary enterprises."

'It has been paid to the farmer for the products he has taken to the city of Virginia to feed laboring men. . . . It has been paid to the mill owner for crushing quartz; it has been to the teamster for hauling lumber, it

has been paid for improving streets and creating buildings. . . , [it] has been dispersed throughout the community. . . . [The mining corporations] are the bases of the prosperity and the wealth of our cities.'

The argument proved effective. After an evening of discussion, the delegates reconsidered the mining-tax clause. This time they voted it down when the mining-county merchants and businessman abandoned their old position.

The depression had convincingly demonstrated the marketplace's dependence upon its largest and most

powerful corporate members. . . . For those committed to market competition as the natural order of things, this path led to but one destination: public sanction of the industrial corporation's interest as the interest of all.

By the time of the September 7 statehood vote, the new constitution had become a sure panacea for economic distress. Upwards of ninety percent of the electorate voted yea, and Nevada, "Battle Born," entered the Union.

In conclusion, Prof Johnson wrote, "With the depression and the emergence of the

Bank of California regime, the day of marketplace individualism came to a close. The Nevadan convention delegates, in their confrontation with a crisis in thought and economy, had reconciled the interests of the little man with those of corporate capital."

Postscript: I find it supremely ironic that in revisiting the issue of mining taxation in Nevada almost 150 years after the constitution was adopted that the state is arguably experiencing it worst economic crisis in its history, and juxtaposed this time, the hard-rock mining industry is enjoying record profits.

Industry and the Individual on the Far Western Frontier: A Case Study of Politics and Social Change in Early Nevada

David A. Johnson

The author is a member of the history department in Portland State University.

THE LAST HALF of the nineteenth century saw the first industrial revolution in the United States come to fruition. Human tending of machinery replaced hand manufactures as the dominant mode of production. Factories succeeded the artisan's shop as the center of industry. Wage laborers displaced craftsmen and mechanics as the mainstay of the laboring class. The large corporation overwhelmed the independent proprietorship and small partnership as the dominant organizational form of capitalist enterprise. As Herbert Gutman, Daniel Rodgers, Alexander Saxton, and Alan Dawley, among others, have so keenly observed, late nineteenth-century industrialism tore at the social, cultural, and political moorings of an earlier, pre-industrial America. To this experience, the far western frontier was not immune.[1]

[1]Herbert Gutman, *Work, Culture, and Society in Industrializing America* (New York, 1976); Daniel Rodgers, *The Work Ethic in Industrial America, 1950-1920* (Chicago, 1978); Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley and Los Angeles, 1971); Alan Dawley, *Class and Community: The Industrial Revolution in Lynn* (Cambridge, Mass., 1976). See also Peter Stearns, "Towards a Wider Vision: Trends in Social History," in Michael Kammen, ed., *The Past before Us: Contemporary Historical Writing in the United States* (Ithaca, 1980), 205-230.

In 1864, residents of the Nevada Territory twice addressed the question of statehood in campaigns riven with the conflicts of emerging industrialism. These contests, divided as they were by a prolonged and devastating depression, were more than simple political campaigns. Within the context, first, of a booming economy, and then of a financial collapse, Nevadans confronted their future. The ways in which they did so embodied in microcosm the tensions, dislocations, and contradictions that industrial capitalism brought to the nation as a whole.

Nevada statehood is conventionally understood as the product of actions taken by leaders of the Republican party and the Abraham Lincoln administration in Washington, D.C. According to most accounts, Lincoln promoted Nevada statehood in order to improve the Thirteenth Amendment's prospects for ratification or to insure himself additional votes should the 1864 presidential election be thrown into the House of Representatives. Others—more persuasively—have held that Radical Republicans spearheaded the movement for Nevada statehood in order to establish precedents applicable to southern states seeking readmission to the Union after the Civil War.[2] To be sure, such national issues and partisan concerns help explain the entry of Nevada into the Union, but as this paper seeks to demonstrate, the critical factors shaping the territory's political evolution were local and directly related to the emergence of a corporate industrial order.

The mythology of the California gold rush played an important role in the settlement and early history of Nevada. During the first years of mining in California, the *laissez faire* producer ethic had found—if only briefly—a genuine basis in equal opportunity. In the mines, the size of a claim was limited by convention to what one person could reasonably work. Profit fell directly to the individual laborer who exploited the public domain. In the face of energy, fortitude, and no small measure of luck, wealth, education, and former station accounted for little.[3]

---

[2]For a discussion of the various interpretations of Republican party politics and Nevada statehood, see Earl Pomeroy, "Lincoln, the Thirteenth Amendment, and the Admission of Nevada," *Pacific Historical Review*, XII (1943), 362–368. See also F. Lauriston Bullard, "Abraham Lincoln and the Statehood of Nevada," *American Bar Association Journal*, XXVI (1940), 210–213, 236, 313–317; Gilman M. Ostrander, *Nevada: The Great Rotten Borough, 1859–1864* (New York, 1966), 35–39; Russell Elliott, *History of Nevada* (Lincoln, 1973), 83–84.

[3]This section relies upon Saxton, *The Indispensable Enemy*, 45–52.

N-2

While the equality of these early years quickly disappeared in the 1850s with the exhaustion of surface deposits and the growth of capital-intensive mining, memories of those days lingered and contributed to an ideology of powerful proportions. The discovery of Nevada's Comstock Lode in 1859 reawakened hopes for another golden age. By then, as the nineteenth-century economist John Hittell observed, California's miners were

> ready to go anywhere, if there was a reasonable hope of rich diggings, rather than submit to live without the high pay and excitement which they had enjoyed for years in the Sacramento placers. Many of them had become unfit for the placid and orderly routine of the common laborer in other countries.[4]

Between the fall of 1859 and summer of 1860, thousands of Californians crossed the Sierra Nevada to the barren, unwelcoming deserts of "Washoe." At first they seemed to have every reason for optimism. They established thousands of claims around Virginia City, and over four hundered different companies offered stock on local exchanges.[5] In the early 1860s all manner of men, using all manner of means, took a chance at the large profits available to the miller. As early as 1861, more than seventy-five mills were operating (with twenty more under construction) in the canyons and rivers surrounding the Comstock Lode. Many of them were hand mills operated by individuals, and even the larger ones consisted primarily of "second hand affairs brought over from California."[6] To the latter-day observer, there was a certain absurdity to the surfeit of mines and mills that covered the countryside. But as Eliot Lord, the Comstock Lode's chronicler, remarked in 1883:

> It was different at the time. In the unknown there is an almost infinite range of possibility, and who would oppose the confident faith of the optimists except with unsupported doubts? . . . The nabobs in fancy might yet be the nabobs in fact.[7]

---

[4]John Hittell, "Mining Excitements of California," *Overland Monthly*, II (1869), 415.

[5]An understanding of Nevada's early development begins with Rodman Paul, *Mining Frontiers of the Far West, 1845–1900* (New York, 1963), chaps. 4 and 5. Also important are Elliott, *History of Nevada*, chaps. 4–6; Eliot Lord, *Comstock Mining and Miners* (Washington, D.C., 1883), chaps. 1–10; Grant Smith, *History of the Comstock Lode, 1850–1920* (Reno, 1943), 48–75; Robert B. Merrifield, "Nevada, 1849–1881: The Impact of an Advanced Technological Society upon a Frontier Area" (Ph.D. dissertation, University of Chicago, 1959), chaps. 4 and 5.

[6]Smith, *History of the Comstock Lode*, 25; *Humboldt Register*, Nov. 12, 1864, p. 2; Merrifield, "Nevada," 127–132.

[7]Lord, *Comstock Mining and Miners*, 126.

The speculative mania that struck all ranks of life and industry during the years before 1864 created a social atmosphere that was, as historians and contemporaries have stated, confusing. This confusion was the mark of a relatively undifferentiated socioeconomic order in which an individualistic-producer ethic had wide play. Lines among miner, merchant, prospector, speculator, entrepreneur, and manager were sufficiently blurred so as to keep class-based conflict at a minimum. Workers who prospected and speculated in mining stocks drifted in and out of the labor force; small merchants and teamsters vied for a corner on growing markets; businessmen invested their savings in new leads discovered by itinerant prospectors; "briefless lawyers" traded their services for shares in disputed claims. Across the Comstock Lode, the promise of wealth appeared available to all.[8] Nevada, as the *Gold Hill Daily News* declared in 1863,

> is, after all, the land for the old Californian. The constant excitement, the fortunes, made and lost, the bright hopes of all—for "no man knoweth what a day or an hour may bring forth"—all, all go to make up what once constituted the hey-day of the glory of California, And to-day, Washoe is only another edition of the early gold seeker's experience, with a thousand percent added thereto.[9]

Everyone, so it seemed, was in on the gamble, and no one knew who would come out on top.

Quite unexpectedly, such hopes met their test in the winter of 1863–1864, when Nevadans initially addressed the question of statehood. At the close of the constitutional convention in mid-December, all observers had predicted quick and unanimous ratification. Times were flush in Nevada. The mines were producing, merchants enjoyed brisk sales, prospectors announced the discovery of new leads—all of "unequaled value"—almost every day, workingmen enjoyed wages unmatched anywhere in the United States. Optimistic about their prospects, and eager to lend support to the North in its struggle with

[8]This early phase of settlement was, as Rodman Paul has shown, repeated in mining areas across the Far West. Because of their brief duration (especially in those regions that became heavily industrialized), these periods provide important instances in which the processes of and responses of industrialization can be examined. Paul, *Mining Frontiers of the Far West*, 71–72, 192–196, and *passim*. A popular treatment of Nevada's first years is George Lyman, *The Saga of the Comstock Lode: Boom Days in Virginia City* (New York, 1934).

[9]*Gold Hill Daily News*, Oct. 31, 1863, p. 2.

the Confederacy, the territory's residents were ready to join the Union.[10]

Within three weeks of the convention's close, however, the constitution faced certain defeat.[11] The reasons for the abrupt change in public sentiment are found in issues at the heart of Nevada's settlement: Who would control the Comstock Lode? For whose benefit would the territory's resources be exploited? What kind of a society would mark Nevada's future? In short, would Washoe remain "another edition of the early goldseeker's experience," or would it fall under the control of concentrated capital?

These issues were raised, quite inadvertently, by the man who most forcefully supported statehood, William M. Stewart. An overpowering figure during Nevada's early years, Stewart enjoyed great notoriety (along with an annual income estimated at $200,000) as counsel for the San Francisco financiers who directed the largest Comstock mines. From his arrival in 1860, he had guided their interests with a deft, though occasionally unsuccessful, hand through the welter of litigation over mining claims. An adroit politician who recognized no distinctions between interest and ideals, Stewart saw in statehood an opportunity to remove the foremost obstacle blocking his clients' efforts to extend their control over the Comstock Lode.[12]

Since 1862, Stewart had unsuccessfully argued in the territorial courts for what Nevadans knew as the "one-ledge" theory of the Comstock Lode. Simply put, this position held that the Lode consisted of but one ledge of ore that ran, on a north-south line, the length of Mt. Davidson's eastern slope. Opponents advocated the "many-ledge" theory, which held that the Lode was made up of a series of parallel quartz ledges (running north and south), divided by silver-free clay and porphyry. At stake in the conflict were millions of dollars; indeed, control of the Comstock Lode. For if the Lode was in fact one ledge,

---

[10]For example, see the closing speeches in the first constitutional convention. William C. Miller and Eleanore Bushell, eds., *Reports of the 1863 Constitutional Convention of the Territory of Nevada, as Written for the Territorial Enterprise by Andrew Marsh and Samuel Clemens, and for the Virginia Daily Union by Amos Bozeen* (Carson City, 1972), 412-415.

[11]I have discussed this campaign (and its historiography) in "A Case of Mistaken Identity: William M. Stewart and the Rejection of Nevada's First Constitution," *Nevada Historical Society Quarterly*, XXII (1979), 186-198.

[12]Stewart's dominant role in early Nevada law and politics is illustrated in Lord, *Comstock Mining and Miners*, 131-180. See also Smith, *History of the Comstock Lode*, 69.

N-5

those mines operating to the east and west of the original Comstock locations were actually trespassing on drifts of ledges legally belonging to others.[13]

The issue was resolved in late 1864 when a referee's report to the territorial supreme court convincingly demonstrated that the Lode was in fact a fissure vein composed of a single ledge.[14] Until that time, however, both the evidence and overwhelming popular sentiment supported the existence of distinct parallel ledges. Stewart's theory had little to recommend itself to the bulk of the population, who saw it as a stratagem of the part of the large companies in control of the original locations to drive out the owners and prospectors who held claims to the parallel ledges. To those who prospected and speculated in the stock of new leads, the "odious one ledge theory" was nothing more than a bald attempt by San Francisco capitalists to monopolize the Comstock's treasure at the expense of the "little man."[15]

When he appeared before territorial supreme court justice John North, Stewart consistently met defeat in his efforts to gain legal sanction for the one-ledge theory. Much to Stewart's chagrin, North declared that the evidence for a single ledge was "the most vague conjecture," thus protecting claim-holders to parallel ledges and making himself a champion of the people. In applauding the judge's action, the *Gold Hill Evening News* pronounced that:

> the one ledge theory meets with almost universal condemnation. . . . Its adherents have no basis for their idea save the mere opinion of self-styled "experts," and [it] cannot by any possibility be established by actual demonstration. One thing is morally certain, and that is that its endorsement by the courts would have the most disastrous effect upon the interests and prosperity of the Territory.[16]

---

[13]The conflicting claims of the one—and many—ledge positions are discussed in Lord, *Comstock Mining and Miners*, 151-161; Smith, *History of the Comstock Lode*, 64-74; and Merlin Stonehouse, *John Wesley North and the Reform Frontier* (Minneapolis, 1965), 159-161. For contemporary comments, see *Gold Hill Evening News*, Nov. 4, 1863, p. 2, and March 26, 1864, p. 2; and J. Ross Browne, "Washoe Revisited," *Harpers New Monthly Magazine*, XXXI (July 1865), 154-156.

[14]Lord, *Comstock Mining and Miners*, 165-171; Smith, *History of the Comstock Lode*, 74.

[15]*Virginia Daily Union*, Jan. 19, 1864, p. 1; *Sacramento Daily Union*, Dec. 31, 1863, p. 2; *Gold Hill Evening News*, March 26, 1864, p. 2. See also Lord, *Comstock Mining and Miners*, 100.

[16]*Gold Hill Evening News*, Nov. 4, 1863, p. 2; *Sacramento Daily Union*, Dec. 31, 1863, p. 2; Stonehouse, *John Wesley North*, 156-177.

Uppermost in Stewart's mind, however, were the "interests and prosperity" of his San Francisco clients. Having been blocked by the courts, he turned to the politics of statemaking. Under the proposed constitution, the judiciary would become elective, and the "great lawyer" had the resources necessary to insure an amenable court. In the weeks before the vote upon ratification, Stewart mobilized the funds at his command and promises of political preferment to capture Nevada's Union party and its candidates for state office. Nomination by the Union party—the only organization in the territory—virtually assured election, and because the election of state officers was to be held concurrently with the vote upon the constitution, Stewart's success in controlling the nominations seemed to assure a governor, legislature, and especially a judiciary that would do his bidding.

He began by packing the Storey County Union party convention, which met three days before the state meeting at Carson City, thereby placing firmly in his grip the largest bloc of delegates to the nominating convention. By having himself named chairman of the committee on nominations, he single-handedly selected the delegates to the nominating convention, as well as the local nominees for state senator, assemblymen, and district judge. Furthermore, he pushed through a resolution binding Storey County to oppose the nomination of Judge North to any office under the new state government.[17]

Stewart's control over the county meeting, his hold on local nominees and delegates to the state convention, and his resolution denouncing the people's champion, North, appeared to serve but one purpose—control of the state government by San Francisco financiers. As a result, support for statehood evaporated. Eight delegates walked out of the Storey County meeting and called for an independent "people's" slate to oppose Stewart's delegation at Carson City. Failing to gain a hearing there, they announced their opposition to statehood on the grounds that Nevada's Union party had come under "a base and unparalleled submission of imposter leaders . . . whose effrontery and heartlessness impel them to infer that *their* mining rights are the first rights to be known and guaranteed in all this part of Nevada."[18]

While Stewart's supporters attempted to dismiss such charges as

[17]*Sacramento Daily Union*, Dec. 31, 1863. p. 3.
[18]*Virginia Daily Union*, Jan. 1, 1864. p. 2.

the ravings of "sore headed and disappointed office seekers," opposition to statehood spread to every corner of the territory.[19] In the weeks leading up to the vote upon the constitution, statehood's opponents, defining themselves as the "little interests," made a variety of charges that revealed the source of their alliance's strength as well as its Achilles heel. All agreed that the central issue before the voters was Stewart's attempt to fill the new state government with political hacks beholden to him and the mining corporation officials he represented. All similarly came to the defense of North, arguing that Stewart desired his removal "because the Judge is too honest to be bribed; too intelligent to be hoodwinked, and too firm to be driven."[20]

On another, and in the longer view more crucial, question—whether the mines should be taxed on the same basis as other property—statehood's opponents found a tenuous agreement that masked essential differences among them. A major issue in the constitutional convention, the tax question divided the population between those with a direct, financial interest in the mines and those—for example, farmers and merchants—without such an interest. The former, Stewart loudest among them, had held during the convention debates that a tax that failed to distinguish between prospecting ventures and paying mines would stifle the development of the territory's mining resources. They argued, therefore, for a tax upon the net proceeds, as opposed to the market value, of the mines.[21] Against this, owners of non-mining property held that such a measure would allow the richest Comstock corporations to avoid their tax obligation by means of bookkeeping sleight-of-hand, thus placing the revenue burden squarely on the shoulders of the state's agricultural and mercantile sectors. A majority of the convention sided with the latter and placed Stewart in an awkward position. While he supported statehood because it provided an opportunity to elect a judiciary sympathetic to his one-ledge claims, he could not openly embrace the constitution's mining-tax clause without appearing to abandon his mining constituents. In an act of legerdemain, Stewart reconciled himself to the mining tax by holding that the

[19]See, for example, *Gold Hill Evening News*, Jan. 11, 1864, p. 2.

[20]*Carson Independent* (reprinted in *Virginia Daily Union*, Jan. 15, 1864, p. 1).

[21]This argument, as elaborated in the first constitutional convention, is found in Miller and Bushnell, eds., *Reports of the 1863 Constitutional Convention*, 225–281, *passim*.

language of the constitution's provision was ambiguous, and that the legislature, if carefully selected by the voters, could

> discriminate as to leave entirely unembarrassed the development of the mineral wealth of the state, and to leave free from taxation undeveloped mining claims of a mere speculative value; and only subject to the burden of Government such claims as yield net profits to their owners.[22]

This argument only served to further unify statehood's opponents. However, in rushing to denounce Stewart's dissimulation on the tax question, his adversaries failed to recognize that they themselves were deeply divided over the same issue. (See Figure 1.)

On the one hand, merchants and businessmen throughout the territory believed that Stewart intended to have "his" legislators violate a provision they considered equitable and essential. His scheme, charged the *Virginia Daily Union*, would "destroy our only means of raising a sufficient revenue," and thereby "ruin the public credit and inflict a ruinous tax on the little interests outside the mines."[23] Siding with the merchants, the Carson and Washoe valleys' farmers and ranchers agreed that Stewart's ambiguous reading of the constitution meant the "surrender of ourselves and our rights to the possession of capitalists of San Francisco and to William M. Stewart, who is their agent."[24] They charged that the nominee for governor, Stewart minion Miles N. Mitchell, had taken one position on the question in the mining counties and another in the agricultural counties, and declared that "if a clause is to be construed to suit the interest of a certain class, and millions of dollars of property released from taxation, then it [the constitution] is not worth the paper it is written upon."[25]

On the other hand, prospectors, mine speculators, and small mine and mill owners attacked Stewart because they believed he was being duplicitous when he claimed the mines would not be taxed under the constitution. They opposed such taxes and believed that Stewart's argument was a cover for his true intentions—the removal of Judge North and the delivery of the Comstock Lode into the hands of San

---

[22]*Sacramento Daily Union*, Dec. 31, 1863, p. 2.
[23]*Virginia Daily Union*, Jan. 13, 1864, p. 2.
[24]*Ibid.*, Jan. 9, 1864, p. 2.
[25]*Carson Independent*, Jan. 14, 1864 (reprinted in *Virginia Daily Union*, Jan. 15, 1864, p. 1.)

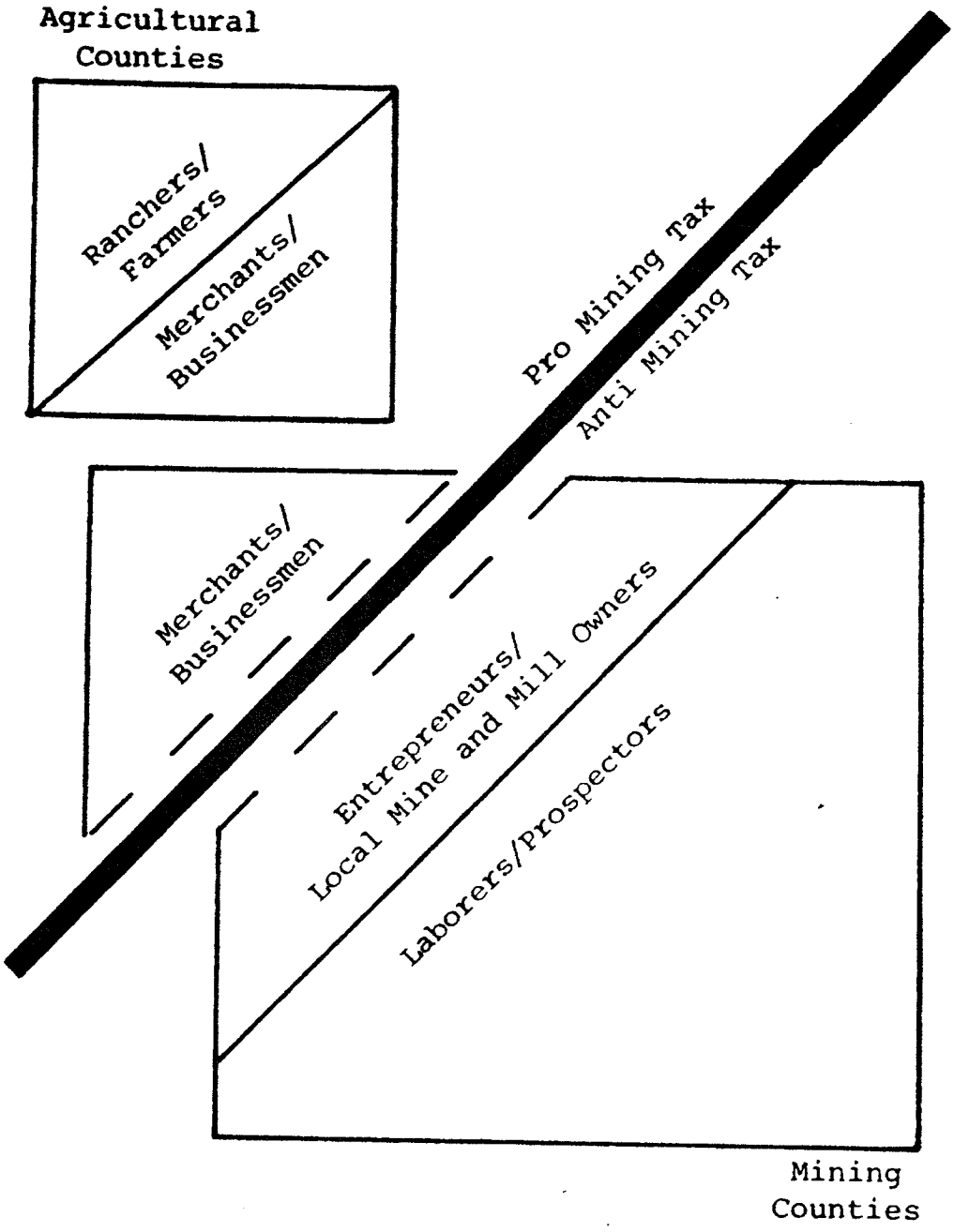


Figure One

Division Over Tax Question
in First Statehood Campaign

Francisco capitalists. The "Stewart Constructionists," they argued, are

> slippery, wiry fellows, lacking the straightforward manliness to meet the issue and oppose the constitution. [They] have discovered a mean, round-about, under-handed way to circumvent and defeat the plain intent and meaning of the taxation clause, by a far fetched and false construction; which if likely to be carried into effect, is the most potent reason why we should reject the constitution. . . .[26]

Workingmen, many of whom prospected and speculated in mining stocks in addition to working as wage laborers, also opposed taxing the mines. Recognizing their common interest with the small mine owner on this question, they too repudiated the "Stewart Constructionists." "How dare they now turn around," asked a laborer from Como, "and vote for that which they condemned as unjust and declared to be wrong. Can they conscientiously do it? *Will* they do it? Brother miners, watch each one of those . . . who in the convention stood up for your rights, and if they now repudiate you and your rights, mark them well, and remember them."[27]

On January 19, 1864, Nevadans buried the constitution by a four to one margin. In defense of individual enterprise, the open marketplace, and the right of the "little man" to join in the race for wealth and prominence, the territory's residents vanquished the monopolistic enemy. "Bill Stewart & Co. are busted out," rejoiced the Washoe City *Old Piute*, "and some of the balance of us are busted in."[28]

The celebration was short-lived. Within six months, Nevadans faced another challenge to marketplace individualism when a sudden and devastating depression struck the territory. Economic collapse confronted Nevadans with a crisis in thought as well as economy. For when they searched for the depression's causes, they came face to face with themselves. And when they sought solutions to it, they found themselves embracing the concentrated capital and San Francisco financiers who had posed such a threat the winter before. The course charted in response to economic breakdown reflected the halting and uneven process by which nineteenth-century Americans reconciled an

[26] *Humboldt Register*, Jan. 16, 1864, p. 3.
[27] *Virginia Daily Union*, Jan. 19, 1864, p. 1.
[28] *Sacramento Daily Union*, Jan. 26, 1864, p. 2.

individual producer ethic with corporate industrialism. The Nevada experience was unique in the speed and clarity with which the rapprochement occurred, but not in the fact of its occurrence.

The effects of Nevada's first great depression were stark.[29] Early in 1864, the output of silver bullion from the Comstock Lode's richest mines began a steady decline as the surface deposits approached exhaustion. Insiders in San Francisco and Virginia City quietly unloaded their stock until, in early spring, the news of the mines' impending exhaustion became public and a general panic began. Between April and September countless speculative empires collapsed. Value of shares in the largest mines plummeted between 70% and 80%. Stock in small mines, prospecting claims, and "wildcats" became worthless. Speculators were ruined, and small mine owners were forced to abandon their claims. As the large companies reduced their operations, unemployment rose dramatically. With the contraction of capital, commerce of every type approached a halt. "All branches of business are depressed," reported the *Virginia Daily Union*,

> and even the largest mercantile houses feel the pressure. Fear is entertained that many small dealers will be obliged to yield to the severity of the times. Many mechanics and laborers have been thrown out of employment, mills and mines have reduced the number of their hands, and few mines, except those of the first class, are being vigorously worked.[30]

As hopes for an early recovery declined into despair over the deepening crisis, Nevadans sought an explanation and solution to their travail: What had caused the run on Washoe stocks? Why had investors abandoned the rich prospects for profit in developed as well as undeveloped mines? Surely, they reasoned, the large mines would again strike valuable ledges as exploration delved deeper into Mt. Davidson. Moreover, the existence of rich ledges across the territory was established fact. All that was needed was a concerted effort to bring those ledges into production. Convinced that the depression did not accurately reflect the true value of their territory's resources, Ne-

[29]The depression is discussed in Paul, *Mining Frontiers of the Far West*, 74–77; Lord, *Comstock Mining and Miners*, 181–182; and Smith, *History of the Comstock Lode*, 48–49.

[30]Quoted in *Sacramento Daily Union*, July 16, 1864, p. 2.

vadans located the source of the collapse in another, more insidious force—wildcat speculation.[31]

With more truth than they realized, editors and correspondents from all walks of life pointed to the cunning and unscrupulous promoter as the cause of crisis. The San Francisco and Virginia City exchanges were flooded with stock in worthless and/or nonexistent mines. Overly gullible investors had been victimized by schemes, and once the panic had begun, the victims did not stop to discriminate between wildcat promotions and legitimate enterprise. "That the people have fought the wild-cat to their sorrow and damage, . . . we are forced to admit," declared the *Gold Hill Evening News* in early May, but this

> does not mend the matter as regards them, nor is the fact that "mining sharps" from Washoe have succeeded in duping and swindling an over credulous people, any credit to the Territory. On the contrary, that very fact has damaged the reputation of our mines, and in the revulsion of feeling towards silver-mining speculations, the real and permanent interests of the territory have been made to suffer from the temporary success of wild-cat swindlers.[32]

While correct in its essentials, this argument was a delusion in one important sense. The speculative mania that collapsed with the crash of 1864 was not simply the work of a handful of swindlers. The population as a whole had shared the preference for promoting rather than working undeveloped and questionable claims. Such promotions had been at the heart of the promise of quick wealth, immediate independence, and socioeconomic mobility that had made Nevada "another edition of the early gold seeker's experience."[33]

That Nevadans failed to face the fact that collapse had originated in the combined actions of a population on the make had little effect on the conclusions they reached. Once having found the source of their travail in the unchecked ambitions of individual speculators, they embarked upon a path that would lead them to alter their commitments to marketplace individualism and to redefine their understanding of the socioeconomic order. The outlines of this redefinition came slowly

---

[31]See, for example, *Humboldt Register*, Oct. 1864, p. 2; *Gold Hill Evening News*, June 10, 1864, p. 2.

[32]*Gold Hill Evening News*, May 7, 1864, p. 2.

[33]*Ibid.*, Oct. 31, 1863, p. 2.

into focus as spring turned to summer. It consisted of three broad propositions, one concerning the past and two the future. First was the "lesson" of wildcat speculation—its baleful influence on social stability and continued prosperity. "The experience of the past," proclaimed the *Humboldt Register*, "has taught us that these feverish speculative manias of to-day leave business prostrate to-morrow."[34] A corollary was the conviction that recovery, prosperity, and progress could come from only one source: the systematic development of paying mines. The *Register* admonished: "We want no water spout stream of prosperity, whose turbid muddy waters bear all before it for a season, and then leave our business field ruined and fruitless."[35] From these premises Nevadans concluded that the development necessary for genuine recovery and lasting prosperity could not come from small mining enterprises. It demanded capital, "capital to the extent of millions."[36] "Experience has taught us," observed a survivor from the Reese River district,

> that it required much capital to develope [*sic*] the mines than was anticipated a year ago. We then thought it was necessary only to find a vein and fortune awaited us; in this how many were most grievously disappointed?[37]

The answer was obvious. All around them, Nevadans saw "[h]ard-working, industrious men . . . reduced to the last extremity." "Men of small means," argued a writer from Unionville,

> can not, or will not, develop and work silver mines. Our mountains are full of shallow shafts and short tunnels; and yet we have but few developed mines—and these almost exclusively owned by San Francisco capitalists. We have yet many rich cropping ledges that have never been prospected at all. . . . Let capitalists get possession of these, and . . . bring to light their true value. . . . Thus there will be an avenue open for employment of hundreds of laborers, and our country will receive an impetus which will be lasting.[38]

During the second constitutional convention, which met in the shadows of deserted mines and growing destitution, this line of rea-

---

[34]*Humboldt Register*, Sept. 17, 1864, p. 2. See also *Gold Hill Evening News*, June 24, Sept. 17, 1864; *Sacramento Daily Union*, Aug. 5, 10, and 30, 1864.

[35]*Humboldt Register*, Sept. 17, 1864, p. 2.

[36]*Gold Hill Evening News*, May 7, 1864, p. 2.

[37]*Sacramento Daily Union*, Aug. 5, 1864, p. 1.

[38]*Humboldt Register*, Sept. 17, 1864, p. 2.

soning was elaborated.[39] In the process of forging a new charter, delegates who had led the fight against Stewart and statehood the winter prior were forced to reconcile their commitment to market place individualism with the lessons of their recent past. The matter came to a head in the convention's resolution of an old issue—the taxing of the mines. As in the prior winter's contest, positions on the tax question were intense and contradictory. But unlike the earlier campaign, these differences were no longer overshadowed and outweighted by Stewart's machinations. In the Storey County election of delegates to the second convention, Stewart had run a poor fifteenth—and the county's delegation was dominated by men whose prominence rested on their opposition to Stewart in the first statehood campaign.[40] The tax question alone dominated the second convention. In the debates, discussions, negotiations, and voting that led to its resolution, old alliances were transformed into new alignments; old arguments shaded into new positions; and the old ethos of market individualism almost imperceptibly evolved into the ideology of corporate capitalism.

Before the 1864 depression, Nevadans had divided on the tax question into two informal factions based upon occupation and property holding: merchants, small businessmen, farmers, and ranchers on the one side; prospectors, small mine and mill owners, and workingmen on the other. Essentially a division between the territory's small mining and nonmining sectors, this alignment exemplified the politics of a mobile and loosely structured society in which individuals acted on the basis of their immediate self-interest. It was here that the second convention began. Indeed, when the mining tax issue was first discussed, it appeared that the convention would simply repeat the arguments and actions of its predecessor. The claims, both for and against a mining-tax exemption, repeated those of the first convention and campaign. Once again, a third of the mining counties' representatives—those identified with the general mercantile and business sector—allied with the agricultural counties' delegates in favor of an unambiguous tax upon the mines.[41] And once again they were successful.

---

[39]The primary impetus behind the calling of this convention were leaders of the Republican party in Washington, D.C. See Pomeroy, "Lincoln, the Thirteenth Amendment, and the Admission of Nevada," 364.

[40]*Virginia Daily Union*, June 8, 1864, p. 2.

[41]My interpretation stems from (a) the leadership of Thomas Fitch, who as editor of the *Virginia Daily Union* had written numerous editorials supporting the mining tax as necessary

Over a series of close and tension-packed votes, the convention repassed the first constitution's tax clause. (See Figure 2.)[42]

This time, however, the issue did not rest. Opponents of the mining tax, mindful of the depression and its lessons, declared that such a clause not only meant certain defeat for the constitution but, more importantly, "the destruction and ruin of the paramount interest of our territory."[43] No longer, they insisted, could any Nevadan maintain (as farmers, merchants, and businessmen had) that their interests could be distinguished from the mining industry. The depression had taught otherwise. Indiscriminate taxation would pose an insuperable burden upon miners, large and small; it would make investment even less appealing; it would drive away needed capital—and, as delegate E. F. Dunne bluntly put it,

> without capital, our mines are valueless. We have not, and never have had, the capital necessary to develop our mines, and we are, therefore, dependent for their development upon foreign capital.[44]

What made this argument important was its novelty and its effect. It was not, of course, the only point upon which the mining-tax opponents based their claims. They again raised the issue of the miner-prospector and the inequity of taxing his hopes and ambitions. But where they went beyond their counterparts in the first convention and campaign, and where they proved successful in forcing the merchants and businessmen to change their position, was in their use of the lessons of Nevada's recent past. The interest of the mining industry, de-

---

for protection of the "little interests outside the mines," and (b) statements from delegates referring to "two interests in Storey County." See, for example, Fitch's editorial cited in footnote 21, above, and the remarks of delegate Lloyd Frizell, in Andrew Marsh, comp., *Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada . . .* (San Francisco, 1866), 517–518.

[42]The roll-call analysis is discussed in David Johnson, "Pioneers and Politics: Statemaking in the Far West, 1845–1865" (Ph.D. dissertation, University of Pennsylvania, 1977), 202–206, 224–236. I began with a cluster analysis of the convention's roll-call votes. This revealed three different factions, one consisting of delegates from predominantly agricultural counties (Ormsby, Washoe, Douglas), another of mining-county delegates identified with merchant-business (or, more generally, nonmining) interests, and the last of mining-county delegates representing mining interests. I then performed a longitudinal analysis of the roll calls in order to determine which two of the three factions allied on different issues, the strength of these alliances, and the points at which they shifted. The mining-tax roll calls upon which the agricultural and merchant-business factions allied are found in Marsh, *Official Report*, 429–431.

[43]Marsh, *Official Report*, 432.

[44]*Ibid.*, 361.

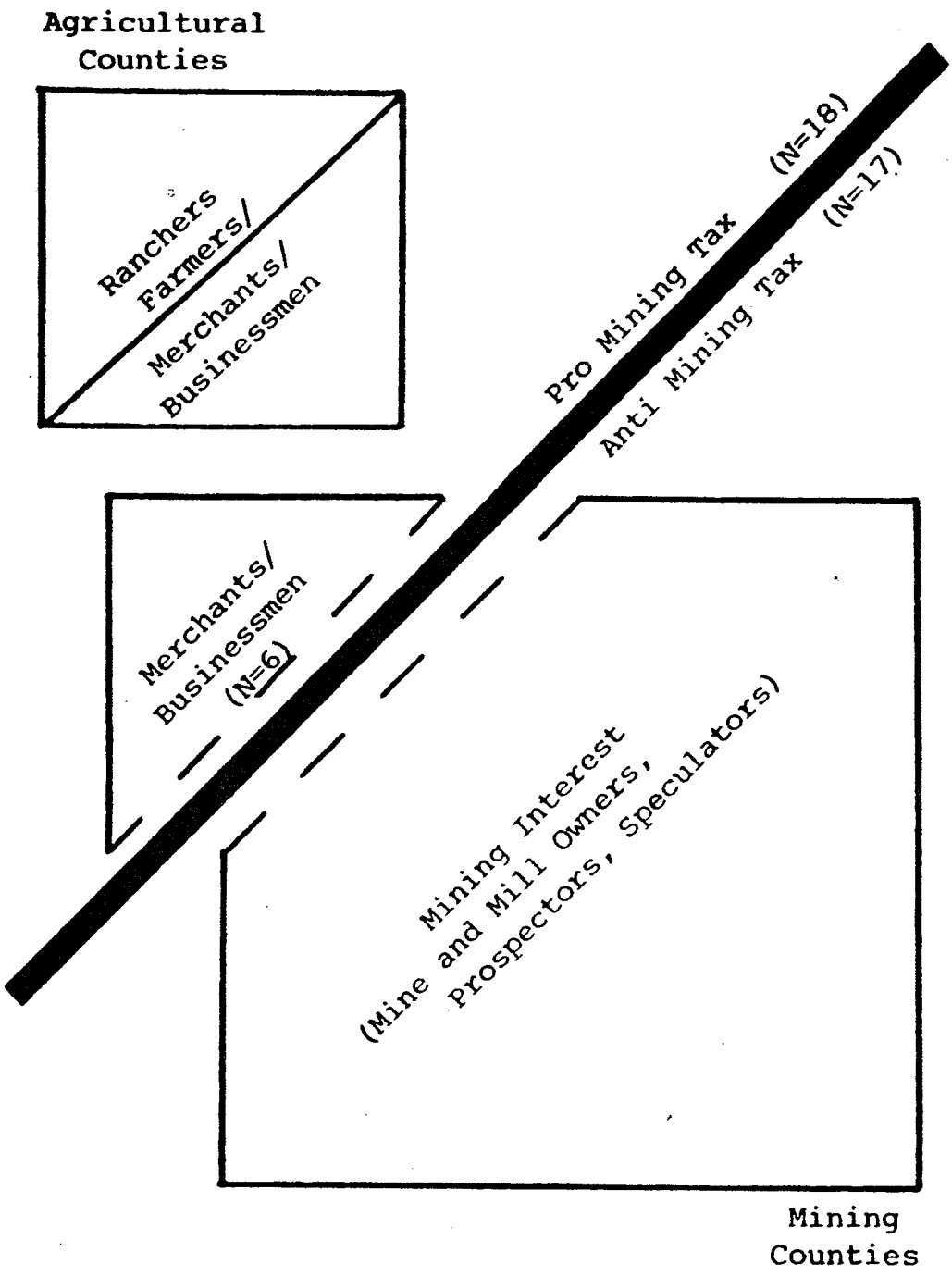


Figure Two

Initial Alignment on Tax Question
in the Second Nevada Constitutional Convention

clared Charles DeLong, a leader of the anti-mining tax faction, was not separate and distinct from the interest of the merchant, businessman, laborer, mechanic, or, for that matter, the farmer. And it was sheer folly to maintain the distinction in light of the depression. Lasting prosperity and substantial improvements depended upon the development of such mining enterprises as the Gould & Curry, Consolidated Virginia, Savage, and Chollar corporations. For it was the capital—capital from outside Nevada—invested in these mines that had paid Nevada's laborers, patronized the territory's merchants, and created markets for ancillary enterprises.

> It has been paid to the farmer for the products he has taken to the city of Virginia to feed laboring men. . . . It has been paid to the mill owner for crushing quartz; it has been paid to the teamster for hauling lumber; it has been paid for improving streets and erecting buildings. . . ; [it] has been dispersed throughout the community . . . [and] has enriched and gladdened the people and built up the community. . . . [The mining corporations] are the bases of the prosperity and the wealth of our cities.[45]

The argument proved effective. After an evening of discussion, the delegates reconsidered the mining-tax clause. This time they voted it down when the mining-county merchants and businessmen abandoned their old position. (See Figure 3.)[46] Had the merchants and businessmen also abandoned their self-interests? Their former allies certainly believed so, but actions that were contradictory in appearance were not so in fact. What the merchants and businessmen had actually done was redefine their interests in light of the territory's crisis and the lessons brought into focus by their colleagues. Behind the decision to alter a position they had held with such conviction was a reconceptualization of the economic order. By their actions, they effectively replaced a definition of the marketplace as a scene of individualized and somewhat random activity with a conception of a system of interrelated and interdependent parts put into motion by the large mining corporation. In essence, they had acceded to the idea of a single overriding interest to which their many individual interests were necessarily subordinate. Implicit in the delegates' behavior was the resolution of a paradox at the heart of a society of private property

[45] *Ibid.*, 367.

[46] The final five votes on the mining-tax issue—which reveal a sudden realignment of forces—are found in *ibid.*, 437, 443, 444, 446.

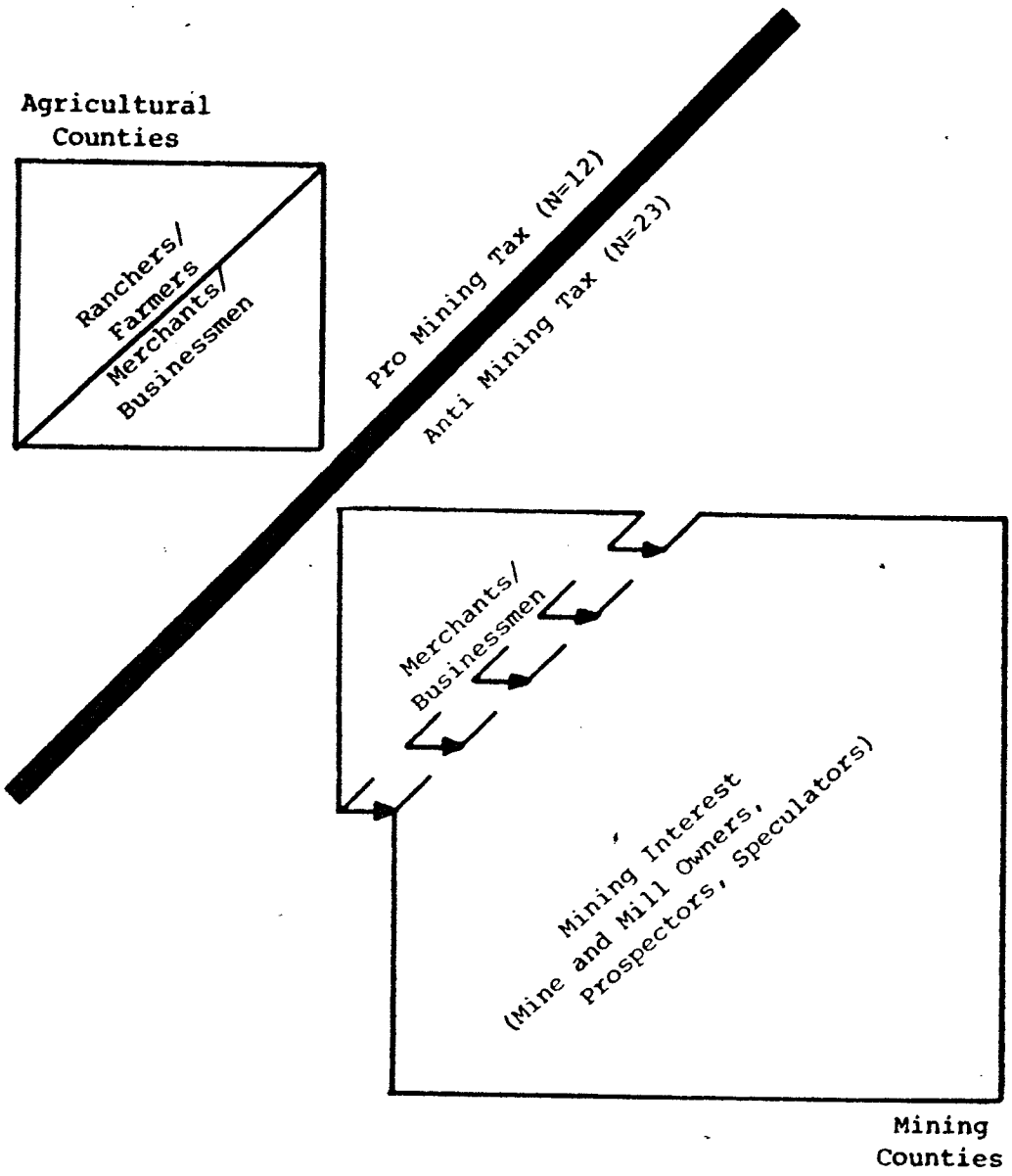


Figure Three

Final Alignment on Tax Question
in the Second Nevada Constitutional Convention

and market-place exchange. For in the face of a crisis that threatened everyone's economic survival, the distinction between large and small interests—the issue at the heart of the antimonopoly cry heard in the first constitutional campaign—simply lost its relevance as a guide to political action. The depression had convincingly demonstrated the marketplace's dependence upon its largest and most powerful corporate members. In resolving the tax issue, the delegates had done nothing other than follow to its denouement the logic of their private, "little interests." For those committed to market competition as the natural order of things, this path led to but one destination: public sanction of the industrial corporation's interest as the interest of all.

The actions of the constitutional convention would be of little significance had they not been confirmed and underscored in other areas of thought and action. But such confirmation was legion. Adversaries of six months before now joined to proclaim their support for statehood. "Public opinion," reported the *Sacramento Daily Union* in mid-August, "is changing rapidly in Nevada Territory in favor of adopting the State Constitution."[47] The reasons for this change echo the arguments elaborated in the convention. "The only hope we have of effecting a speedy and absolute cure of our crushing ills," the *Territorial Enterprise* announced,

> is in the adoption of a State Government. It is an imperative necessity, and as such we accept it. . . . Better to pay even double taxes, if by doing so we can make our property ten times more productively valuable, than to pay even less and let property continue to depreciate. It is for the interest of all—and particularly of the miner—that work shall speedily as possible be resumed in the temporarily abandoned mines. If we should have flush times again, we must vote for the State Constitution.[48]

Similarly, the summer saw a renewed attack on the territorial judiciary, and in the context of the economic depression, to much greater effect. The court's corruption and inefficiency, so the argument went, had created a massive backlog of litigation over mining titles, and therefore had caused capitalists to shy away from investing in Nevada's mines. Embraced by the judiciary's earliers defenders as well as Stewart and his allies, this line of reasoning further contributed to

[47] *Sacramento Daily Union*, Aug. 19, 1864, p. 2. See also *ibid.*, Aug. 16, 22, and Sept. 12, 1864.

[48] *Ibid.*, Aug. 19, 1864, p. 2.

statehood's support by holding that an elective (and therefore purified) court under the state constitution would remove another impediment to recovery.[49] By the time of the September 7 statehood vote, the new constitution had become a sure panacea for economic distress. Upwards of ninety percent of the electorate voted yea, and Nevada, "Battle Born," entered the Union.[50]

Perhaps more indicative of the coming order, however, were events occuring outside the political arena. Even as the statemakers were hard at work forging a rapprochement with the large corporation, other harbingers of industrialism—and the reordering of social relationships it would entail—were coming into focus. In the spring of 1864, the San Francisco financier, William Ralston, organized the Bank of California. When Nevadans hailed the new institution as "encouraging promise of a speedy release of cash capital," little did they realize just how radical an effect the bank would have upon the state's future.[51] Ralston dispatched William Sharon to Nevada as the bank's agent. Beginning in the fall, Sharon put into effect a policy that would, within three years, concentrate control of the Comstock Lode's mines, mills, merchandising, and transportation in the bank's hands. Offering loans to local mine and mill owners at half the prevailing rate of interest, Sharon acquired an increasing number of notes from people who defaulted when the depression continued into 1865. In the spring of the following year, Ralston, Sharon, and other Bank of California officers incorporated the Union Mine and Milling Company, which formed an effective vertical and horizontal monopoly of Nevada's mining industry.[52]

While Sharon's manipulation of the money market was bringing about the concentration of capital control, a parallel reorientation of Nevada's working class was also underway. At the very moment

---

[49]I have discussed the territorial judiciary in relationship to the statehood movement in "The Courts and the Comstock Lode: The Travail of Nevada's John Wesley North" (Unpublished paper delivered at the 1980 meeting of the Economic and Business Historical Society).

[50]Secretary of State, Nevada, *Political History of Nevada, 1973* (Carson City, 1974), 84; Elliott, *History of Nevada*, 78-89.

[51]*Gold Hill Evening News*, June 17, 1864, p. 3.

[52]Lord, *Comstock Mining and Miners*, 244-262; Smith, *History of the Comstock Lode*, 49-121; Elliott, *History of Nevada*, 123-169; and Paul, *Mining Frontiers of the Far West*, 75-80. See also George Lyman, *Ralston's Ring: California Plunders the Comstock Lode* (New York, 1937); and Oscar Lewis, *Silver Kings: The Lives and Times of MacKay, Fair, Flood, and O'Brien, Lords of the Nevada Comstock Lode* (New York, 1947).

Sharon inaugurated his operations, the Comstock Lode's laborers established the Miner's League of Storey County. Although initially broken—by the combined effects of a hastily formed Citizens' Protective (i.e., mine owners') Association and the workers' own internal dissension—the league provided the model for later organizations that eventually formed the core of the Western Federation of Miners.[53]

The arrival of Sharon and the aborted labor organization testified to the future contours of circumstance and conviction first elaborated in the constitutional convention. They spoke, as did the statemakers, to a different relationship between industry and the individual. Indeed, they pointed to a different social order, one marked by conflict-ridden divisions between capital and labor. With depression and the emergence of the Bank of California's regime, the day of marketplace individualism came to a close. The Nevadan convention delegates, in their confrontation with a crisis in thought and economy, had reconciled the interests of the little man with those of corporate capital. Meanwhile, in the banking houses of San Francisco and Virginia City, and in the workingman's assemblies, the adversaries of the future marshalled their forces to meet the coming age.

---

[53]Richard Lingenfelter, *The Hardrock Miners: A History of the Mining Labor Movement in the American West, 1863–1893* (Berkeley and Los Angeles, 1974), 31–65 and *passim*.

N-22

Testimony of Jim Hulse on S.J.R. 15 of the 2011 Session Of the Nevada Legislature

S.J.R. 15 is an excellent and long-overdue proposal to amend the Nevada Constitution. It would close the tax loopholes that mining companies have enjoyed since the founding of Nevada as a state. Since the beginning, the so-called "net proceeds of mines" tax has been a shell game, working to the advantage of the mining companies and against other Nevada taxpayers.

The mining industry has been a sacred cow in Nevada since the beginning of our state's history. Tax exceptions were written into the original state Constitution at the insistence of the mining barons of that era. Over the decades, the representatives of the voters assembled here in Carson City have not dared to restrict their free-roaming exploitation and pollution of our state, until now.

This may be the most important Constitutional Amendment that will come before this busy session of the legislature. Although it will not provide a quick fix for the immediate financial problems, it gives hope that future sessions of the legislature will have an opportunity for our elected representatives to write tax laws that require the mining companies to pay a fairer share of their profits to Nevada, rather than to foreign corporations.

The Nevada Mining Association is likely to tell us that this amendment will kill the goose that has laid the golden egg. Many gold and silver eggs have been produced in Nevada over the last 150 years, but when they have been hatched, most of their benefits have been realized by investors from distant states or countries.

Look at the recent records of the Fraser Institute, based in Canada, which makes annual reports to mining industry investors about the most profitable places in the world to enjoy profits in mining. For many years, Nevada has been one of the most promising jurisdictions in which to do business because of this state's low taxes and permissive environmental regulations. In 2009-10, Nevada was easily the best target in the U.S. to mine and carry the profits away.

The testimony you will hear from the mining lobbyists will probably emphasize the various taxes paid by their industry --- the same taxes we all pay for essential public services. The data they offer are impressive in the raw numbers, but this is only part of the story.

They will not tell you --- at least they have done so until now --- about the rich profits they have repeatedly taken from our land during the boom years without regard to the damage they do to the terrain or the human needs they leave behind when the bust comes --- as it inevitably does. This pattern has been repeated many times in Nevada history. It might be a bit harsh to call them scavengers, but it would not be inaccurate.

If this session of the legislature can pass S.J.R. 15, and if the next session will do the same, then the voters of Nevada will have the opportunity to express their will on this proposal in 2014. That will be the 150th anniversary of statehood. It is time to allow us voters to take another look at the privileges our predecessors gave to the mining industry.

Jim Hulse
Retired Professor of History
University of Nevada - Reno

April 5, 2011

Provided by Hugh Jackson

1. The total mineral tax burden on Wyoming producers can be as high as 25 to 30 percent. Nevada's total burden is capped at 5 percent.

WYOMING	NEVADA
• 7% (coal), 6% (oil & gas) base state severance tax • 6.3% (statewide average) county "gross proceeds" tax • 12.5% to 16.6% federal mineral royalties	• 5% net proceeds tax

Sources: "Wyoming Severance Taxes and Federal Mineral Royalties," Wyoming Legislative Service Office, July 2010 (http://legisweb.state.wy.us/budget/wyosevtaxes.pdf); Wyoming 2010 Department of Revenue Annual Report (http://revenue.state.wy.us/PortalVBVS/uploads/2010%20DOR%20Annual%20Report.pdf)

Jackson 4/5/11

2. The taxable value of Wyoming's minerals was 7 times larger than Nevada's – but total mineral revenues were 24 times larger.

State mineral revenues, 2009
(including share of federal royalties/leases and permanent fund earnings)

WYOMING		NEVADA	
$12.6 billion taxable value		**$1.8 billion taxable value**	
Severance	$769.8 million	Net proceeds	$97.6 million
Gross proceeds	$784.9 million		
Share of FMR & coal leases	$678.8 million		
PMTF earnings	$135.3 million		
Total	**$2.37 billion**	**Total**	**$97.6 million**

Sources: Nevada 2009 Net Proceeds of Minerals bulletin; Wyoming 2010 Revenue Department annual Report (http://revenue.state.wy.us/PortalVBVS/uploads/2010%20DOR%20Annual%20Report.pdf)

Jackson 4/5/11

EXHIBIT P Senate Committee on Revenue

Date: 4-5-201 page 1 of 2

3. The taxable value of Wyoming's minerals was 7 times larger than Nevada's – but state and local mineral revenues were 16 times larger.

State mineral revenues, 2009
(state and county mineral taxes only)

WYOMING		NEVADA	
$12.6 billion taxable value		**$1.8 billion taxable value**	
Severance	$769.8 million	Net proceeds	$97.6 million
Gross proceeds	$784.9 million		
Total	**$1.55 billion**	**Total**	**$97.6 million**

Sources: Nevada 2009 Net Proceeds of Minerals bulletin; Wyoming 2010 Revenue Department Annual Report (http://revenue.state.wy.us/PortalVBVS/uploads/2010%20DOR%20Annual%20Report.pdf)

Jackson 4/5/11

MINUTES OF THE
SENATE COMMITTEE ON REVENUE

Seventy-sixth Session
April 14, 2011

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 2:20 p.m. on Thursday, April 14, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator Steven A. Horsford, Vice Chair
Senator Michael A. Schneider
Senator Moises (Mo) Denis
Senator Mike McGinness
Senator Joseph (Joe) P. Hardy
Senator Elizabeth Halseth

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Brenda Erdoes, Legislative Counsel
Gayle Rankin, Committee Secretary

GUEST LEGISLATORS PRESENT:

Senator Shirley A. Breeden, Clark County Senatorial District No. 5

OTHERS PRESENT:

Jan Gilbert, Progressive Leadership Alliance of Nevada
Deb Cook, Chief of Administration, Department of Motor Vehicles
David Humke, Washoe County Commissioner
Susan Brager, Clark County Commissioner
Sabra Smith Newby, Director of Administrative Services, Clark County

CHAIR LESLIE:
The last three things I want to bring up today as a group are S.B. 491, which lifts the sunsets, S.B. 492, the mining claims fee bill, and S.J.R. 15, the constitutional amendment for the mining tax provision.

SENATE JOINT RESOLUTION 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

I would like the Committee to consider a motion to request a waiver on all three of these bills so they can remain here in the Revenue Committee and be exempt from the deadlines. It is a special rule we have to request an exemption from the Majority Leader and the Speaker of the House to keep these bills and continue to work on them and process them at the appropriate time. These bills have the potential to affect the budget on the revenue side. We need more time to work on them before we process them. This is the appropriate committee to work on these bills, and I do not want to rerefer them to the Senate Committee on Finance. Do you want to comment, Senator Horsford?

SENATOR HORSFORD:
I do not think it is unusual. It is apparent we need to continue to discuss options for responsible ways to balance the budget. These are viable steps for that purpose. These three bills need to continue to be part of the discussion, and those decisions are not ready to be made. We still have work to do on the budget. Until those final decisions are made, I will support the motion and I would move at this time to request a waiver on S.B. 491, S.B. 492 and S.J.R. 15. That motion would include exempting those three bills from the deadline requirements in Committee and House of origin passage so they can be considered up to and including the final day of Session.

SENATOR HORSFORD MOVED TO REQUEST A WAIVER TO EXEMPT S.B. 491, S.B. 492 AND S.J.R. 15 FROM THE DEADLINE.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MINUTES OF THE
SENATE COMMITTEE ON REVENUE

Seventy-sixth Session
May 20, 2011

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 5:18 p.m. on Friday, May 20, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator Steven A. Horsford, Vice Chair
Senator Michael A. Schneider
Senator Moises (Mo) Denis
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Joseph (Joe) P. Hardy (Excused)
Senator Elizabeth Halseth (Excused)

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Tim Crowley, President, Nevada Mining Association
Michael J. Brown, Vice President, Barrick Gold Corporation

CHAIR LESLIE:
I will open the hearing on Senate Bill (S.B.) 491 with Proposed Amendment 6801.

CHAIR LESLIE:
I will close the work session on S.B. 493 and open the work session on Senate Joint Resolution (S.J.R.) 15.

SENATE JOINT RESOLUTION 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

SENATOR HORSFORD MOVED TO DO PASS S.J.R. 15.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR McGINNESS VOTED NO.)

* * * * *

CHAIR LESLIE:
The meeting of the Senate Committee on Revenue is adjourned at 5:43 p.m.

RESPECTFULLY SUBMITTED:

_____
Mike Wiley,
Committee Secretary

APPROVED BY:

_____
Senator Sheila Leslie, Chair

DATE: _____

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-Sixth Session
June 5, 2011

The Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 4:23 p.m. on Sunday, June 5, 2011, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Marcus Conklin
Assemblyman Richard (Skip) Daly
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Richard McArthur
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

I think this bill is just that; it is a big issue and we would be sure that this interim committee would take up this issue as one of the things that it takes care of during the interim.

Chair Segerblom:
That sounded like an endorsement. We have a motion and a second.

> THE MOTION FAILED. (ASSEMBLYMEN GRADY, HARDY, HICKEY, MCARTHUR, AND STEWART VOTED NO.)

Assemblywoman Flores changed her vote to no, so the motion went down six to six.

We are waiting for someone to testify on the next bill, so we will take a brief recess [at 5:04 p.m.].

I will call the meeting back to order [at 5:18 p.m.] and open the hearing on Senate Joint Resolution 15.

Senate Joint Resolution 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Senator Steven J. Horsford, Clark County Senatorial District No. 4:
I appreciate you, Mr. Chairman, and the Committee for bringing this issue up. I hope after everyone has an opportunity to review the legislation and the intent, you will see that this is a measure that will give Nevadans a choice about how one of the largest industries in our state can pay its fair share in supporting education, public safety, and other vital services.

In 1987, the Legislature proposed a constitutional amendment to limit the tax on the net proceeds of mines to 5 percent. That measure was approved by the Legislature again in 1989 and ratified that same year by Nevada voters in an election. Nevadans spoke at that special election, and the 5 percent limit on taxation of net proceeds has been in effect ever since.

Senate Joint Resolution 15 would give Nevadans the opportunity to speak again more than 20 years later about whether they believe the current system for taxing the mining industry is fair and adequate given the changed circumstances in the state. As all of you know, we are not the same state we were 20 years ago. Our population has grown, our economy is changing, and we have challenges in meeting the educational needs of our children like never before.

In this session, we have discussed potential changes to our revenue system in support of these needs, and I believe that taxing mining is an important part of that overall dialogue. Senate Joint Resolution 15 would give Nevadans the opportunity to direct the Legislature on whether the current mining taxation system should be maintained or altered. It would allow Nevada voters to decide whether they want us to have the latitude as legislators, their elected officials, to determine how a new rate is more reflective of the needs of this state by lifting the constitutional ban and changing the rate.

I want to be clear that this is not a mandate for changing the current system, but an opportunity for the people of Nevada to tell us whether they want that change. We have spent a lot of time on this and still, at this hour, we cannot reach final agreement with the industry, which is in part due to how complicated the mining tax is on the net proceeds of minerals. The split between the counties and the state is problematic, and the imposition of the 5 percent cap is problematic. It is problematic because as legislators we have no flexibility. We cannot adjust based on the needs of the time or the situation to make the necessary, appropriate decisions.

As an example, we had a joint hearing in which we received information from all the local governments in the state. Several of the local governments were rural counties. I remember asking an elected official from one of the rural counties about whether that county had the ability to adjust its contribution from the Net Proceeds of Minerals Tax because it had received so much money. That county had a reserve that it could not use, yet there is not enough money to fund education in the state budget. During that conversation, it was clear to us that the split between the counties and the state is rather arbitrary. When you look at the history of what occurred in 1987, it was a decision made to try and reach a compromise. It ended up going on the ballot, and now it is in the *Nevada Constitution* in a way that we have no ability to change.

This measure, S.J.R. 15, would allow the voters to again direct whether we should have that flexibility. For those members who want to reform our revenue code in the future, we need to have all avenues on the table. The tax on mining, under the Net Proceeds of Minerals Tax, is a special, unique tax. It is not like any other tax in any other state or place around the world. Because of that, I think we need to do at least two things. One is to repeal Section 5 of the *Constitution*, which would allow us the latitude on the rate. There are times when that rate may need to go down if gold prices are at $200 or $300 an ounce. Or we, as legislators, should be able to determine whether the rate should go up when gold is over $1,300 an ounce like it is today.

We also should be able to determine the split of the share that goes to the counties and the state. That is something we also do not have the latitude to do because of the constitutional provision in Section 5.

This is a process. Nothing in S.J.R. 15 changes the tax rate on mining today. This is about putting it to a vote of the public to determine, over a five-year period, whether that should occur. Based on the enormous appeal we have heard from our constituents, we in this Legislature need to do our part to give them every opportunity to speak on these issues—whether it is the mining issue or whether it is how we broaden our business tax as a whole.

We all have constituents who have asked why we cannot adjust this rate and why can the mining industry not contribute more. Why are they not part of an overall solution to help us balance our budget? When we were considering the margin tax, when we were considering the transaction tax, when we were looking at proposals that would have reformed our revenue code in a fair, equitable, and broad way, the mining industry would participate like every other industry participates. But without those options, they have a special deal. That special deal prevents us, as legislators, from asking them to do more to help us fund our budget. I think that is wrong and that the voters should be able to speak. So I ask this Committee to consider approving S.J.R. 15 and allowing the voters to have a say in this process.

Chair Segerblom:
Because this is a constitutional amendment, we would vote on it this session. If it is approved, we would come back in two years and vote on it again. If it is approved then, it would go to a vote of the people. The people would ultimately decide whether to change the *Constitution*.

Assemblyman Conklin:
Senator, you mentioned the opportunity to change the tax rate with the boom and bust of gold. All precious metals are boom and bust products. In many instances, their value is countercyclical to both the business cycle and to how consumers with assets believe their investments are worth. As the stock market goes down, precious metals tend to rise. As the price of oil changes, investors alter where they want to put their money as they look for safe investments. If we want to have a vibrant industry, we would have to have some flexibility with that rate. The value can drastically change, but the cost to produce does not change with that boom and bust—it is flat. So given the nature of what we have endured and finding it very difficult to change any tax rate at all, what would give the Legislature more flexibility to deal with it? How would we find that flexibility we already know we do not have? Look at this session as a classic example.

Senator Horsford:
Your points are well taken. Without the voters determining one way or the other, if they say yes in five years and agree that the 5 percent rate should be lifted, that empowers a future Legislature to set tax policy based on the circumstances at the time. I think that is what we were elected to do. The more of these types of provisions we have in the *Constitution*, the more our hands are tied. We are ineffective in our ability as legislators to respond to the needs of our constituents. Right now is a perfect example. People are crying out for reform to our revenue code. Mining, and gaming to a lesser extent, are at the top of the list of what people say should be on the table for consideration.

I do not know about you, but I cannot explain in a simple one-page letter or email to my constituents why I cannot change the rate on mining, because it is too complicated due to the constitutional provisions. My response has been that I am working hard to reform the revenue code as a whole, and that mining and gaming and banking and manufacturing would pay on an equal and fair basis. Until, or unless, we have the ability as legislators to change these issues, our hands are tied and that is where I have found myself this session.

Assemblywoman Kirkpatrick:
Where does geothermal fit within this? They are currently under the same provisions of the Net Proceeds of Minerals Tax. Was that discussed?

Senator Horsford:
You are correct; they are. It did come up and it was discussed. I believe the geothermal industry is attempting to clarify the definition in a way that allows them to be differentiated going forward. I do not think anything in S.J.R. 15 imposes any impact on geothermal today. Over a five-year period, if the voters approve this constitutional question, then we, as legislators, would have the flexibility to determine how to impose the rate, who to impose it on, and how to differentiate between certain sectors, such as geothermal.

Assemblyman Grady:
We are very fortunate to have about four rural counties with mining. They have done very well. You mentioned a county with a revenue reserve. It is one of Nevada's smallest counties. That county has not always been as prosperous as it is now, nor have some of the other counties. What mining has brought to the rural areas are some of the highest-paying jobs. These counties do not rely on social services because of the wages they pay. Maybe it should be looked at, but if we look at it truthfully and put mining at $3.64 rather than at the $5.00 cap currently in place, we may be sorry we even looked at it because it could bring us less revenue. It is a real gamble because if you hit both ends of

it—go from $5.00 to $3.64 and the price of gold drops from $1,300 an ounce to $700—some of those counties may be coming to us asking for help.

Eureka County is very fortunate. It has some money in the bank, but it also has been through a $270-an-ounce gold period. I do not disagree with you, but I think we need to be very, very careful.

Senator Horsford:
I completely agree, and your experience in local government is very insightful. The fact we have this unique tax on net proceeds—and I know there will probably be representatives from the mining industry who will talk about the property-tax element of that—has also been the problematic part of how this industry is treated and why it is not fair or equitable toward other industries. The fact they are able to take deductions against that property tax payment on net proceeds has also been problematic, and we are working to correct some of that in a measure that we hope will move through the process.

You raise a very valid point, but this is not necessarily about trying to get to an increase on mining; it is trying to get to a process that provides for fair and equitable treatment and for the flexibility and authority to be with the Legislature and with the Governor and not with a constitutional provision that is, in my view, antiquated. It is based on where we were 20 years ago and not where we are today or where we hope to go as a state.

Senator Sheila Leslie, Washoe County Senatorial District No. 1:
I concur with the comments of the Majority Leader. We have had extensive hearings in the Senate Revenue Committee this session on mining. We have learned a lot about mining and how it is taxed in other states. Most states tax nonrenewable resources like mining and oil through a severance tax, for example, yet we cannot even look at that option because of the way the *Constitution* reads.

I think it is really important to note that it is a nonrenewable resource. Right now, gold is over $1,500 an ounce, but who knows how long that is going to go on. Mining has traditionally supported a lot of rural counties with high-paying jobs and good health insurance. They have been good employers, but at the same time, they are removing a resource that belongs to all of us and which we will never get back. We need to be able to tax them appropriately. I do not think tax policy really belongs in the *Constitution* for obvious reasons: It cannot ever be changed. I urge your consideration of this. To emphasize, this would have to be voted on by the 2013 Legislature and then it would go to a vote of the people. I think our constituents are demanding it; I know mine are. I do not know about Mr. Grady's; perhaps not as much. The constituents in the

urban areas who have been subsidizing, even with mining, all the rural counties for a long, long time are demanding that we look at it. We cannot look at it because of how the *Constitution* reads.

Senator Horsford:
I want to put on the record for the benefit of the Committee, under the repealed section, please focus on that term "and no other tax may be imposed on a mineral or its proceeds until the identity of the proceeds, as such is lost." That is such a restrictive provision. It denied all ability for a Legislature and Governor to act in a responsible way. I do not know who did it or why they did it, but I sure wish we could find out. I think that provision is the most restrictive provision in tax policy that exists in the State of Nevada.

Assemblywoman Flores:
I absolutely agree that there needs to be a fair and equitable rate of taxation among all the industries in Nevada, including mining. We could go back and forth all day about whether mining has paid its fair share and what they are doing this legislative session to help out. However, I have to say that I am very concerned. We did not manage to get a fair and equitable tax structure this session. From what I have heard, we have not managed to ever get that. If we were to do this, and voters approve, I am very doubtful that we are going to get a reformed tax structure in the next four to six years. What happens when we go to the uniform and equal rate of assessment in taxation and then, rather than getting what we are getting now, it goes down to the much lower percentage of assessment that is currently in place? That is a very real concern.

I am all for having mining pay more, especially in proportion to the type of profits they have been making. I am afraid that we are not going to end up getting it, though. I wonder if there are better ways to go about making them pay more.

Senator Horsford:
It is ironic. I used to work for Lee Smith, who did work for Independence Mining. That is how I learned so much about Elko and the ways of mining. I went to open pit mines to understand how the industry works. As a legislator and policymaker on both the Senate Finance Committee and Senate Revenue Committee and the work I have done during this session in reviewing every action that has been taken by the Tax Commission, I am really concerned about how the system has been used against us as legislators. I am concerned about how the provisions in this section of the *Constitution* have limited our ability to respond as legislators. Assemblywoman Flores, you raised a very legitimate point and one I share.

I came into this session the same way I came into the last session—I wanted to reform our revenue code in a way that is fair, equitable, and broad-based. I have gone to Elko and spoken to mine employees at the mines. I attended their association meetings. At those meetings, I said that I did not know that we should be supporting single-industry taxes. That is my position; and I hold firm to that, but let us talk about what has happened in this session alone. Every attempt to broaden our revenue structure in a way that is fair, that is equitable, is responded to by every side "No." "No, no, no, no" and we end up with nothing. Even now, on our budget sheets that are being closed within the next 24 hours, it is a budget that will have some amount of investment from the mining industry, but it is not enough. They are not contributing their fair share this session. I feel strongly about that because when I came into this session my intent was clear—to find a broad, fair, and equitable tax structure that treated everyone in a way that would not have a large impact on any one industry. That is not what we are leaving with. There will be those who say they came to the table and supported that, but they really did not because they could not even get the representatives from their own counties to support it. How can they come to the table and, in all honesty, look us in the face, eye to eye, and say they did everything they could when they have not? They have not helped to communicate to my constituents, or to those throughout the state who are calling out for reform and want mining to pay their share, why we needed that reform package. They did not do that, so what we ended up with was nothing.

My point to that message is to say that we should absolutely be putting our effort into a reform of our revenue code that is fair and equitable and that keeps a low rate which allows every sector to contribute and protects our small businesses. That is where our efforts should be. Even under some of the proposals we were recommending, Section 5 of the *Constitution* still protects the mining industry in a way that they cannot do all they should be doing as an industry. Senate Joint Resolution 15 is about lifting this arbitrary 5 percent cap in the rate and allowing us as the Legislature to be able to adjust that rate up and down. There is nothing to say it automatically goes up; there is nothing that says it automatically goes down. That would be the decision of the Legislature and of the Governor. There is nothing that says that the split between the county and the state should not be adjusted. There are counties that are not doing as well, and the percentage cut in those counties may need to be better. In other counties where the reserve is high, the percentage rate may need to be adjusted, but we do not have the authority as the Legislature to change that, and that is a problem because we cannot do our jobs.

I think this measure, along with the reform package to our overall revenue code, could ultimately get us to where many of us want to be—a revenue structure

that is fair and equitable and works for the State of Nevada based on the economy we have today, not the economy of 50 or 100 years ago. The mining industry is a very important industry. They pay great wages; they are good corporate partners in the communities they serve. Overall, I have no beef with them, but I have a concern and a legitimate problem with Section 5 and the limitations that this provision places on all of us as elected officials and the responsibility and oath we swore to that we would do our jobs. We cannot do our jobs with these types of limitations in place.

Assemblyman Ohrenschall:
Is there any other industry that has its tax rate set in the *Nevada Constitution* like that so the Legislature's hands are tied?

Senator Leslie:
There is no personal income tax; that of course is in the *Constitution*.

Assemblywoman Kirkpatrick:
There are actually quite a few exemptions, such as for newspapers, farm equipment, and food.

Senator Leslie:
Those are exemptions and this is the *Constitution*. Those are in statute.

Assemblywoman Kirkpatrick:
Those are in the *Constitution*.

Senator Leslie:
Well, some are in the *Constitution,* such as the sales taxes, but I do not believe there is anything else like this.

Assemblywoman Kirkpatrick:
Geothermal.

Senator Leslie:
Well, geothermal is part of this.

Assemblywoman Kirkpatrick:
Yes.

Chair Segerblom:
Does anyone else have any further questions for the two Senators? [There was no response.] I know you have work to do, so thank you so much for coming.

We are going to go back to Senator Copening's bill, Senate Bill 418.

Senate Bill 418: Creates a subcommittee of the Legislative Committee on Health Care to oversee the implementation of federal health care reform in this State. (BDR 40-695)

Senator Allison Copening, Clark County Senatorial District No. 6:
This was a Committee bill we brought forward.

Chair Segerblom:
We had a tie vote on this bill because there was no one to present it. If you would explain it, we could probably pass it.

Senator Copening:
Health care reform is one of the biggest programs that has come to our state. We want to make sure that the Legislature has a little bit of oversight over what happens for all these state agencies and the decisions they make regarding health care reform. It is not that we do not trust the state agencies, but this is big, and we need to be able to watch all of the different measures that are being proposed and have a say in the process. That is what this subcommittee will allow.

Assemblyman Ohrenschall:
In the bill, Senator, I noticed you mentioned studying high risk insurance pools. Do you think those might have a place in Nevada someday? I know we are not one of the states that has high risk insurance pools for people who cannot get insurance because of their preexisting conditions, but do you think they might find a home here in Nevada?

Senator Copening:
It is part of health care reform. Any part of health care reform that has been federally mandated is what we as a state need to take a look at. I am not an expert on that; the Commissioner of Insurance has been working on that. It is all a part of the reform and is something we want to have a say in before state agencies are able to make decisions on our behalf.

Chair Segerblom:
Thank you, Senator. We are going to go back to testimony on Senate Joint Resolution 15.

Senate Joint Resolution 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Kyle Davis, representing Nevada Conservation League:
We are in support of Senate Joint Resolution 15. The main reason was mentioned by Senator Leslie when she talked about the way natural resources are dealt with in other states, and nationally as well. It makes a lot more sense to do something along the lines of a severance tax. That being said, all this bill does is give the people the ability to vote on whether Nevada ought to do something in statute rather than in the *Nevada Constitution*. That makes a lot of sense from a tax policy perspective, so we are in support of the bill.

Jan Gilbert, representing Progressive Leadership Alliance of Nevada:
We, too, support Senate Joint Resolution 15. No other industry is protected in the *Nevada Constitution*, so mining should be treated like other industries. In 2008, $5.7 billion in gold was taken out of the state. The mining industry paid $40 million to the state's General Fund. In 2009, gaming made $6.8 billion and operated at a loss. Gaming paid $1 billion to the General Fund. To me, mining needs to be looked at differently. I applaud them for what they do in the local communities. I know they do pay taxes—property taxes, sales taxes, and the Modified Business Tax, but they are a special industry. With this being in the *Constitution*, your hands are tied, so we urge you to pass this. The bill is for the future because it is a five-year plan. Currently, Senate Bill 493 is looking at a short-term plan, dealing with the deductions. I hope you will support both of these measures.

Val Sharp, Vice President, Las Vegas City Employees' Association:
We also support this resolution. Net proceeds is a number that can be manipulated very easily. We know that the state's Department of Taxation had not audited mining for two years. Other articles in the paper indicated that even though there is a Commission that allows expenses to be used in this net proceeds area, against their own recommendations, other expenses were allowed to be put against the net proceeds. I agree that mining pays very well. That is how you can get people to go down in holes in the side of the mountain to do this, because it is a dangerous and hazardous job. We read in the paper all the risks that are involved in mining. However, what is fair is fair. The constitutional protection is not fair. The Legislature should have a say. Right now, with mining pulling out about $1,500 per ounce, they have now shifted their focus on lesser quality ores which have higher costs involved because this is the time to mine those ores. Consequently, when they normally pay approximately $300 per ounce for the extraction of gold, they are now going after ores that cost approximately $500 to $600 per ounce. That is because

their spread is so high. I think this is one of a number of steps that the State of Nevada needs to make to reform its tax structure. To say that we are going to do it, but not do this, is not an equitable way to accomplish that task. This puts it in the hands of the Legislature, so the mining corporations, many of which are foreign, can have their say with their legislators just like we do. We support this as a good first step.

Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
Prior to the Legislature starting, when they had the forums and we talked about revenue, I told them they were missing one word, and that was mining. I have done a lot of work in this area over the years. Recently I represented the classified school employees in Battle Mountain and learned a lot about mining and arbitrations. What we have discussed for several sessions is doing something like S.J.R. 15. We support S.J.R. 15 for the following reasons. Obviously, there was a gentleman from Wyoming who talked about that state's tax structure and that mining did pay its fair share there. We talked about how mines are going to continue doing very well in the rurals for the next 20 to 30 years. This is not like what we saw 20 years ago. My wife's family is from Eureka County and back then, when the mines were flooded, it took a lot. I support S.J.R. 15.

Al Martinez, representing Service Employees International Union Local 1107:
This is long overdue. We believe there needs to be fairness and equity so that the legislators can have the flexibility to make the changes for Nevada and do what is right for all Nevadans.

Assemblyman Conklin:
Because you represent people who work for government, one of the things I was getting confirmation from goes to the heart of how difficult it is to find increases in tax rates. Under the *Constitution*, there is a 5 percent amount. It is a guaranteed amount that cannot be raised or lowered. If this were to pass, there will be the following mathematical equation: Five percent is the maximum because severance is a property, so there is a cap that is also a constitutional cap. In order to raise this, we need two-thirds approval from both houses. If I want to lower, I need only 50 percent plus one. Right now I have a guaranteed amount, or I have greater odds that the amount would go down rather than up if this were to pass. I have been on the record more times than I can count for increases, so we all know where I stand, but it is still very, very hard to do. What are your thoughts on that?

Ron Dreher:
I am a business owner. I pay my taxes on gross receipts, not net. I do not get the deductions that other people have, based on what I make. I understand what you are saying, but this is long overdue, letting the voters give you the power to go either way. But you are right; now that the mining industry is doing so well, we are asking them to pay their fair share like everyone else. Could the opposite occur, like your suggestion? I am sure it could. Hopefully you will have all the tools needed to make this a fair and equitable process. The Majority Leader could not have said it better for all of us throughout the state—we need to do something. A few weeks ago the mining industry paid $7.7 billion in cash to buy another mine. We are missing the boat and your hands are tied. This is the only way we can fix it. If we had started three sessions ago, we would have an answer now.

Assemblyman Conklin:
I do not disagree with any of that. I am being the skeptic. Had we had the opportunity in front of us today, we would still be in the same boat because finding two-thirds has been an impossibility for us. On another point, this is a separate net proceeds tax; they pay all the other taxes. They pay the MBT, they pay sales tax, property tax, they pay everything that every other business pays, and this is in excess. Much like gaming does. They have a separate tax on top of all the other business taxes they pay. I agree with the comments made, and I also think there is room for growth. I am not convinced this is the way to do it.

Leonard Cardinale, representing AFL-CIO Local 9110:
We are also in support of this resolution. I agree with the Majority Leader that this will give the legislators more latitude as we move into the future and be able to be involved in some of the decisions directly instead of being handcuffed. Ultimately, the people will have a say, which I think is a tremendous advantage. Yes, there may be some pitfalls down the road and it may work against us depending on how well mining does over the years, but I also think you have to start somewhere. At this point, we are limited by how much the legislators can do on behalf of their constituents who want reform in the tax structure.

Assemblywoman Flores:
I am all about giving the people their voice. I would love for the people to give us the two-thirds vote.

Chair Segerblom:
If this passes, it would be in the *Constitution* and people could vote on the referendum, which is 50 percent of the vote in November, and require the tax to change for at least a couple of years.

Is there anyone else in support? Seeing none, is there anyone here in opposition?

Tim Crowley, President, Nevada Mining Association:
I have a brief statement and would like to express that the mining industry is perplexed by a measure that would reduce our tax liability by removing the industry-specific tax that we pay. As the Senate Majority Leader pointed out, in 1987 this legislative body passed a related resolution that passed again in 1989 and went to the people. The people determined that they wanted to take our tax rate from the current property tax rates in the counties where we operate to the constitutional maximum of 5 percent. It was not the industry that asked for that. We paid the same rate as all other property tax payers; we did not ask for the increment on top in 1989. We are now defending a provision we did not ask for and asking that it not go back to the way it was 20 years ago.

As you know, mining pays all the conventional business taxes. We pay the Modified Business Tax, sales tax, regular property tax on our facilities, plus we pay the Net Proceeds of Minerals Tax. This measure would remove our industry's specific taxes and put our mines on the same level as all other Nevada businesses except for gaming, banking, and insurance, which also pay industry-specific taxes. We oppose industry-specific taxes, but that is on a go-forward basis. We have made our position clear that Nevada's tax structure should be changed and a broad-based tax should be put in place. Those are taxes we would pay. The provision in Section 5 does not prevent us from paying any future taxes on our businesses. Perhaps once that is done and a broad-based business tax is put in place, the state's industry-specific taxes could be undone. Until then, we do not support removal of the Net Proceeds of Minerals Tax, and we do not support a reduction in our taxes at this point.

Chair Segerblom:
You say you do not want to do anything until these other taxes are in place. This would obviously take at least five years. We could pass it this year, and then maybe next year those taxes would be in place and we would be ready for 2015.

Tim Crowley:
I think the main point that I am trying to make is that this is a tax reduction. It removes our industry-specific tax. The mining industry is firmly in support of

restructuring our tax structure and putting in place a broad-based structure, but to lead with a tax reduction—as opposed to the margins tax, which was introduced this session, or a sales tax on services, which we would support—and to take away our industry-specific tax seem counterintuitive to us.

Chair Segerblom:
The problem is that this is a five-year process. There are other taxes, but they do not apply to you because of this constitutional amendment, correct?

Tim Crowley:
All of those taxes would apply to us.

Chair Segerblom:
Would they apply on top of what you pay now?

Tim Crowley:
Absolutely. Just as the sales taxes, property taxes, and Modified Business Taxes do today, the margin tax would apply to us just like any other business. We are not precluded from paying taxes on our businesses; we are precluded from paying taxes on the value of our mineral in any other way than through the Net Proceeds of Minerals Tax.

Chair Segerblom:
Do you deduct the tax as part of the process?

Tim Crowley:
No, sir. We do not deduct net proceeds from the other taxes. We do not deduct the Modified Business Tax from the Net Proceeds of Minerals Tax. We do not deduct our conventional property taxes from the Net Proceeds of Minerals Tax. We do deduct sales taxes. We deduct the cost of goods that we purchase, and that is a measure that is being considered at this moment in S.B. 493. That is a deduction in that bill, as it stands today, that would be removed. We do not support that removal, but we understand that is probably a change that will happen.

Assemblyman Horne:
Currently, your testimony is saying this bill is removing a tax. If the Legislature wanted to increase the 5 percent to 6 percent, or change it from net proceeds to gross proceeds, it could not do it because of constitutional restrictions. However, in removing it, it gives an opportunity for the legislative body to find a different formula in which to tax, not necessarily reducing the tax.

Tim Crowley:
All property tax payers have a constitutional cap on their property at 5 percent. In 1989, when this measure was passed the first time, it took us from the statutory cap on property to the constitutional cap. Instead of being capped at 3.64 percent on our property values, we are capped at 5 percent. The netting is a formula to pinpoint the fair market value of our property. There is not a debate over whether we pay a net or a gross; we pay 5 percent on the fair market value of our property.

Assemblyman Horne:
I understand that. Today that could not be changed by us. With the passage of S.J.R. 15 this session, next session, and if the vote of the people is "yes," and we want to repeal Section 5, then that could be changed. It would not be a 5 percent cap; it might be 4 percent or 6 percent. It might be 5 percent on the gross. This does not necessarily mean there is a reduction in tax revenue from mining; it is just opening a window to reformulate taxes from mining.

Tim Crowley:
The constitutional cap on property values is 5 percent for all taxpayers, whether this provision is in place or removed. The question was if you remove the Net Proceeds of Minerals Tax, that allows the voters to take our property tax above 5 percent. It is my understanding that is not accurate. The *Constitution* provides that all property taxes are capped at 5 percent. This would take us back to the statutory level; it would remove the assessment mechanism for finding our fair market value and reduce our tax liability. The constitutional provision that caps property values at 5 percent would remain.

Chair Segerblom:
If a gold mine is worth $5 billion, does the property tax apply to the value of the mineral that is part of the property?

Tim Crowley:
Yes, it does.

Chair Segerblom:
So the 5 percent versus the 3.6 percent could be significant.

Tim Crowley:
I do not understand; 3 percent is less than 5 percent.

Chair Segerblom:
But the 5 percent is not on the value of the property; it is what you are making every year.

Tim Crowley:
No, sir.

Chair Segerblom:
It is the actual value of the gold in the ground?

Tim Crowley:
Yes.

Jim Wadhams, representing Barrick Gold Corporation:
Article 10 of the *Constitution* has a couple of provisions that are pertinent. The one that S.J.R. 15 would remove is Section 5. Section 5 was proposed and driven by Assemblyman Sedway in 1987. His intent was to increase the taxes derived from mining by taking mining property tax to the total 5 percent of all property. No property can be taxed at more than 5 percent. Assemblyman Sedway's intention was to max out our tax. Senate Joint Resolution 15 would remove that provision and put this property to be taxed literally, just like other property, which is at fair market value at the ad valorem rate in the county in which it is situated.

Chair Segerblom:
My question is what is the value of the gold in the ground in Nevada?

Jim Wadhams:
I cannot give you a monetary answer, but I can tell you that the system for the appraisal of all real property is based upon what a willing buyer would pay a willing seller. If I offer you an acre of land and assure you there is an ounce of gold in it, the question is how much will you pay me for that acre of land? That is the appraisal process. You have some mining claims, so what is someone going to buy them for? They will try to guess how much mineral is there.

Chair Segerblom:
Hypothetically, if we had $100 billion of gold, what does that produce every year at 3.6 percent?

Jim Wadhams:
The question is what would somebody pay you to buy that?

Chair Segerblom:
It is worth $100 billion. What would you get on an annual basis at 3.6 percent?

Jim Wadhams:
I cannot do that math.

Assemblyman Hardy:
If I am understanding correctly, basically if we go back to the same values of real estate that we had four years ago, it was going for $10 per square foot. Today that same property is not worth $3 per square foot. This puts it in line with the same taxes, and we are all now looking to get a decrease in our property values. Can that happen, in which we now lose the tax we were getting? Is that what you are saying would happen if we approve S.J.R. 15?

Jim Wadhams:
That is correct. By coincidence, I have a *Las Vegas Sun* article on how business property in the Las Vegas area lost $12.5 billion in value and the proportionate property tax. It would put the mineral property on the same calculation.

Michael J. Brown, Vice President, U.S. Public Affairs, Barrick Gold Corporation:
In closing, I would like to point out that gold mining is quite unique to Nevada. Gold in any significant quantity comes from Nevada, Utah, Montana, and Alaska. When we are looking at cross-comparisons with other states, we were looking at those states. We are not looking at energy fuels; that is an entirely different model. An unprecedented portion of the world today is now open to mining investment, and Nevada competes on a world stage for mining investment. In most jurisdictions where we operate there is in place a broad-based business tax of some sort. Nevada is actually a unique exception to that. In places where there is not a broad-based business tax, what you often find is that before a company will invest billions of dollars in a speculatively captive capitol, they will do a tax stabilization agreement with the country. That is not traditionally done in the United States. States like Nevada that depend on industry-specific taxes are in many respects partners with those industries. Nevada has two industries that are quite unique. The state has been largely funded with industry-specific taxes. I raise these points in closing the issue because mining is not asking for something special, but mining is definitely something unique. The World Bank would not be publishing books on mineral royalties and mining taxations if mining was not something different as an industry. It is a risky and long-term investment. Mines have very long gestation periods where there is no revenue coming in. Mineral and commodity markets are volatile. I was the "gold guy" at the treasury. During my 17-year career at Barrick, gold has averaged $489. In the last 10 years I have seen record highs and I have seen record lows. Mines are depleting assets. It is not like a factory that keeps running. A mine eventually runs out of gold. This makes it quite a different business entity. After the fall of the Berlin Wall, as countries sought advice on how to develop their mining industries, the World Bank started to give advice, and frankly Nevada gets it right in a lot of places. It has a tax system in place that allows for the recovery of costs. It

has a tax system in place that allows for the recouping of the costs, the investment of the mine, and it has a revenue sharing component. I do not know what the pleasure of the Legislature is going to be on this measure, but if there is a public debate on that, I sincerely hope we can bring in the experts. This is truly a unique industry that, over the long haul, has benefitted the state in many ways and can continue to benefit going forward.

Chair Segerblom:
I would concur with that. Mining has been great for Nevada.

Assemblyman Horne:
Mr. Brown, you stated how mining is unique to Nevada. I would agree with that, but also, we are in some unique times. In your opinion, S.J.R. 15 may not be the best way to solve some of our state's problems. I have not heard an alternative solution other than broad-based business tax, and we have had that discussion since 2003. I ask you, as a unique industry to Nevada, what is the mining industry's recommendation? What are they going to do to help Nevada take the step to get out of the problems we are having. I do not think your answer is going to be the status quo.

Michael Brown:
The mining industry was involved with the various panels on tax policy that were convened by Governor Guinn, and one that was convened later, and over the years has been an active part of the discussion on how to put that system in place. I was here in 2003 trying to advance Governor Guinn's program for a broad-based tax. I have served on the Council for a Better Nevada. The Nevada 20/30 group has worked on these issues. We have tried to be part of the policy debate going forward. On a practical level, rising gold prices have produced increased revenues from the mining sector. We anticipate the numbers that were provided in the fiscal forum on May 1, 2011, will be higher by the end of the summer. The associations had a long-standing position supporting broad-based taxes in the state, and we will continue to try to work with legislators to achieve some of those goals. As a company, we try to do our part in rural Nevada. I am one of two companies in the state on the Dow Jones Sustainability Index, which is a ranking of corporations that have a commitment to community and social development. Despite the fact that our 4,455 employees are in the rural counties, you see us in urban Nevada. We are actively engaged in a variety of charity measures in these very difficult times. With the recession, the one thing you want to focus on is job creation. My company has hired 950 people in the last two years. We had a job fair in Reno in April, and a job fair in Henderson in December. We have made an effort to do what we can in the Nevada economy. I have touched on a lot of points.

This is my ninth legislative session, Mr. Horne, and I plan to be here for a tenth and help this Legislature address the problems facing this state.

Assemblyman Horne:
Thank you. I do not know if I will be here for my sixth. I will note that, regarding the benefit of mining to rural Nevada, it is always said as if the only responsibility is to rural Nevada, and leave it alone, it is doing us good. I think it is all of Nevada that I am concerned about. I understand the benefits that mining has brought to rural Nevada. Many people would not have received a college education but for mining. Times have changed, and the rurals should not be the sole beneficiary of mining.

Michael Brown:
I understand. This is also why Governor Miller put the reforms in place for revenue sharing arrangements. We stand ready to continue to participate in a proactive position with the State of Nevada going forward.

Assemblyman Daly:
Article 10, Section 1 of the *Nevada Constitution* states, "The Legislature shall provide by law for a uniform and equal rate of assessment and taxation . . . ." Then there are the exceptions which are being proposed to be removed under this provision. The argument is when you go to Section 5, which is being proposed to be deleted; it says, "The Legislature shall provide by law for a tax upon the net proceeds of all minerals . . . ." I am assuming we already have the law, following the *Constitution,* that says what that is going to be, which is 5 percent. If we eliminate this exemption, that law would automatically be repealed and you would go down to 3.64 percent.

Michael Brown:
What I was addressing is that this is a very unique industry. I was not here in 1989 when this was reformed. I did have the occasion yesterday to go to the Legislative Counsel Bureau library and look at various changes that have been made since 1927. I know that a lot of thoughtful consideration has been put into this. I actually do not know the answer to that specific question but I can try to find it.

Assemblyman Daly:
I believe that is what the testimony was about. I think the important thing, in the rest of the provision that will be eliminated, is the county/state split and the part that says, "No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost." Mining is unique, but not any more unique or special than the gaming industry, which also pays property taxes and sales taxes, et cetera, and they also pay an industry-specific tax to

benefit the state. We can have your property tax go down to 3.64 percent, the same as everyone else, but we can also then potentially implement an industry-specific tax to represent your uniqueness and importance in the state the same as gaming and other industries.

Michael Brown:
With respect to splitting between local and regional governments, this issue crops up around the world, because in many places with mining, the central government wants all the revenues, or the provincial government wants all the revenues. We often point to Nevada as an example of a state that has managed to find a way to bring balance to that.

Chair Segerblom:
Thank you. Senator Horsford would you like to summarize?

Senator Horsford:
Thank you for the indulgence. I need to respond to one argument I am hearing that I feel is not at all valid. To suggest somehow that putting S.J.R. 15 to a vote of the public in five years can somehow be a tax decrease on the mining industry is false. It is false. It is spin. It is misrepresentation of the facts. They want to come here and tell us do not pass S.J.R. 15 because it may result, in five years, in a tax decrease on us. Is that the message? That is what I heard, and I had to come back and refute it. This bill empowers the Legislature and the Governor, if it is approved again in 2013 and approved by the voters thereafter, to set the rate. It allows us to determine what the split is between county and state and it allows us to determine whether we would impose an additional tax other than the net proceeds. Those are three things we have no control over because of a special provision in the *Constitution* that they lobbied for and imposed in the *Constitution* dating back to 1987. To now come here and suggest that somehow, if we change that, they will get a tax decrease—I do not buy it, and neither should this Committee, or the people of the State of Nevada.

Chair Segerblom:
Is there any public comment? [There was none.] It appears that we have lost our voting majority, so we will recess to the call of the Chair.

[Committee recessed at 6:28 p.m. on June 5, 2011, and reconvened at 3:50 p.m. on June 6, 2011.]

Chair Segerblom:
We will begin with Senate Bill 418. We heard this bill yesterday and voted on it. We will have a motion to reconsider.

ASSEMBLYWOMAN FLORES MOVED TO RECONSIDER SENATE BILL 418.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GOICOECHEA, GRADY, HARDY, HICKEY, MCARTHUR, AND STEWART VOTED NO.)

Do we have a new motion on S.B. 418?

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 418.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

Any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN GOICOECHEA, GRADY, HARDY, HICKEY, MCARTHUR, AND STEWART VOTED NO. ASSEMBLYMAN OCEGUERA WAS ABSENT.)

Now we will consider Senate Joint Resolution 15. We heard yesterday that this is a proposed constitutional amendment. This will need to pass this session and pass next session, and then it will be a vote of the people. We are not amending the *Constitution*; we are just asking whether the people want to consider amending the *Constitution*. That would be in the election of 2014. Do I have a motion?

ASSEMBLYMAN DALY MOVED TO DO PASS SENATE JOINT RESOLUTION 15.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN GOICOECHEA, GRADY, HARDY, HICKEY, MCARTHUR, AND STEWART VOTED NO.)

Is there any public comment? We will recess to the call of the Chair.

FLOOR ACTIONS

AMENDMENTS ON SECOND READING
FLOOR VOTES AND STATEMENTS
OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS* (HTTP://WWW.LEG.STATE.NV.US/SESSION/76TH2011/JOURNAL/), WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

THE ONE HUNDRED AND ELEVENTH DAY

CARSON CITY (Saturday), May 28, 2011

Senate called to order at 10:37 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by Valerie Wiener, RScP.

As we stand in this place, in the power and presence of God, taking in that breath of life, we know that God is the source of all life, that it is God that breathes each of us.

The magnificence of the One is the center and source of the Universe and all that is. God is life, joy, love, and peace and, in all that we are, we demonstrate these qualities as the ideas of God.

Today we think, believe in, and know the wisdom and intelligence of what we do and how we do it.

We demonstrate this Highest Power in all that we think, in all the ways that we express, and how we experience who we are.

As we share our ideas, knowing that we do this in the best interest of the people we serve, the people who call Nevada home, we do it as ideas of God. We are the demonstration of this Highest Power and Presence that express, in, of, and as each of us, in all that we do and all that we are.

For this I am so grateful, knowing that each step we take this day, and the days ahead, we are doing so with wisdom, intelligence, and love.

And so it is,

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which were re-referred Senate Bills Nos. 207, 437, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVEN A. HORSFORD, *Chair*

Mr. President:

Your Committee on Natural Resources, to which were referred Assembly Bill No. 322; Assembly Joint Resolution No. 5, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK A. MANENDO, *Chair*

Mr. President:

Your Committee on Transportation, to which were referred Assembly Bills Nos. 152, 204, 212, 232, 384, 463, 508, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

subcontractor. NRS 338.555 provides the contractor to pay either the whole 5 percent of the retainage or 2.5 percent, if the contractor continues to withhold the retainage.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 15.

Resolution read third time.

Remarks by Senators Leslie and Horsford.

Senator Leslie requested that the following remarks be entered in the Journal.

SENATOR LESLIE:

Senate Joint Resolution No. 15 proposes to amend Article 10, Section 1 of the *Nevada Constitution* to repeal the provision establishing a separate tax rate and providing for assessing and disbursing the tax on the net proceeds of mines.

This amendment to the *Nevada Constitution* would allow the Legislature to determine both the taxation of the net proceeds of mines and the distribution of those taxes.

Pursuant to Article 16, Section 1 of the *Nevada Constitution* and Chapter 218D of NRS, the provisions contained within this joint resolution must be approved by the Legislature during the 2011 and 2013 Sessions, followed by voter approval at the 2014 General Election or a special election, in order to be ratified.

SENATOR HORSFORD:

I rise in support of this resolution. This legislation would give Nevadans a choice about how one of the largest industries in the State should pay its fair share in supporting education, public safety and other vital services.

By way of history, in 1987, the Legislature proposed a constitutional amendment to limit the tax on the net proceeds of mines to 5 percent. That measure was approved by the Legislature again in the 1989 65th Session and ratified that same year by Nevada voters.

Nevadans spoke at that special election and the 5 percent limit on taxation of net proceeds has been in effect ever since.

Senate Joint Resolution No. 15 would give Nevadans the same opportunity to speak more than 20 years later about whether they believe the current system for taxing the mining industry is fair and adequate, given the changed circumstances in the State.

We have talked about the need to fundamentally reform our revenue code and the taxation of the mining industry is an important part of that overall reform.

Senate Joint Resolution No. 15 would give Nevadans the opportunity to direct the Legislature on whether the current mining taxation system should be maintained or altered. It would ask Nevada voters whether they want us to have the latitude to determine a new rate more reflective of the needs of this State by lifting the constitutional ban on changing the rate.

This is not a mandate for changing the current system, but an opportunity for the people of Nevada to tell us whether they want that change.

Roll call on Senate Joint Resolution No. 15:

YEAS—13.

NAYS—Brower, Cegavske, Gustavson, Halseth, Hardy, McGinness, Rhoads, Settelmeyer—8.

Senate Joint Resolution No. 15 having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

THE ONE HUNDRED TWENTIETH DAY

CARSON CITY (Monday), June 6, 2011

Assembly called to order at 12:02 a.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, April Mastroluca.

Heavenly Father, as You have said before, I will say again: "Well done, good and faithful servant." Please bless this day and bless the work we are about to do.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 159.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 958.

AN ACT relating to ~~[offenders;]~~ **convicted persons;** requiring the Director of the Department of Corrections to provide certain information to an offender upon his or her release, including information regarding employment assistance; ~~[authorizing a court to require the earnings of a probationer to be held in trust for certain purposes;]~~ **providing for the waiver of fees for the issuance of certain forms of identifying information for certain persons released from prison;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Director of the Department of Corrections to provide certain information to an offender upon the offender's release from prison. (NRS 209.511) **Section 1** of this bill requires the Director to provide such an offender with: (1) information relating to assistance for obtaining employment, including information regarding obtaining bonding for employment; and (2) information and reasonable assistance relating to

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 15.

Resolution read third time.

Remarks by Assemblyman Segerblom.

Roll call on Senate Joint Resolution No. 15:

YEAS—27.

NAYS—Ellison, Goedhart, Goicoechea, Grady, Hambrick, Hammond, Hansen, Hardy, Hickey, Kirner, Kite, Livermore, McArthur, Stewart, Woodbury—15.

Senate Joint Resolution No. 15 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Senate Bills Nos. 164 and 340 be taken from the Chief Clerk's desk and placed on the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 279.

Bill read third time.

Remarks by Assemblymen Ohrenschall, Horne, Kirner, and Smith.

Roll call on Assembly Bill No. 279:

YEAS—32.

NAYS—Brooks, Carlton, Carrillo, Daly, Diaz, Ellison, Hansen, Horne, Neal, Pierce—10.

Assembly Bill No. 279 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.

Bill ordered reprinted, reengrossed, and transmitted to the Senate.

Assembly Bill No. 406.

Bill read third time.

Roll call on Assembly Bill No. 406:

YEAS—42.

NAYS—None.

Assembly Bill No. 406 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered reprinted, reengrossed, and transmitted to the Senate.

Assembly Bill No. 487.

Bill read third time.

Remarks by Assemblywoman Smith.

Roll call on Assembly Bill No. 487:

YEAS—42.

NAYS—None.

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT

SUPPLEMENTAL MATERIALS

DURING HEARINGS ON SENATE BILL 493, 2011, WHICH CREATED THE MINING OVERSIGHT AND ACCOUNTABILITY COMMISSION, EXHIBITS F, H, I, AND J PERTAINED TO MINING TAXATION. THOSE EXHIBITS ARE ADDED HERE AS SUPPLEMENTAL INFORMATION.

MINUTES OF THE
SENATE COMMITTEE ON REVENUE

Seventy-sixth Session
May 18, 2011

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:55 p.m. on Wednesday, May 18, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator Steven A. Horsford, Vice Chair
Senator Michael A. Schneider
Senator Moises (Mo) Denis
Senator Mike McGinness
Senator Joseph (Joe) P. Hardy
Senator Elizabeth Halseth

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Mark W. Crawford, CEO, Northern Nevada Medical Center
Dan Musgrove, The Valley Health System
James T. Richardson, J.D., Ph.D., Nevada Faculty Alliance
Victor Joecks, Nevada Policy Research Institute
Robert Stanley Hadfield
Tim Crowley, President, Nevada Mining Association
Jan Gilbert, Progressive Leadership Alliance of Nevada

CHAIR LESLIE:
I will close the hearing on S.B. 491 and open the work session on Senate Bill (S.B.) 493.

SENATE BILL 493 (1st Reprint): Creates the Mining Oversight and Accountability Commission. (BDR 32-1152)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):
I have prepared testimony regarding my Proposed Amendment 6968 (Exhibit F and Exhibit G).

SENATOR SCHNEIDER:
The deductions I take on my federal income tax allow for dues and publications, but these are not allowed in this bill. Do we disallow them in Nevada, but we take them on our federal income tax?

SENATOR HORSFORD:
What is clear in our law is the deductions are to be used for the operation of a mine. These areas need to be clarified because a membership to the World Gold Council has nothing to do with the operation of a mine.

SENATOR HARDY:
Is there a concept of looking at the two-thirds majority vote issue on that as amended?

SENATOR HORSFORD:
I would defer to our legal counsel. We are not making decisions based on revenue but on a tax policy that is fair.

SENATOR HARDY:
I suspect there are more regulations in the federal government on what is deductible and not deductible than it is in "federal law." The regulations are in Nevada statutes, but we still have to obey the law. Codifying in *Nevada Revised Statutes* (NRS) would make it clearer as to what we are doing.

CHAIR LESLIE:
Those are items mining would be able to deduct from federal income tax.

Testimony: Mining Deductions Amendment to SB 493
Senate Revenue Committee
May 18, 2011

Madam Chair and members of the committee, today I am offering an amendment to SB 493 to address the issue of deductions the mining industry can take against its gross proceeds to arrive at its net proceeds – and the level of taxes it pays to both state and local governments as a result.

This amendment is the end result of more than two months of study and analysis – and raises the fundamental issue of how to fairly tax the mining industry, one of the largest industries in this state.

It was driven by a revelation made to this committee at its March 10 meeting. That was when the former director of the Department of Taxation disclosed the department had not audited the mining industry's claims for deductions for more than two years, and in that time the level of deductions taken by the industry against its gross yield had greatly increased.

Despite the price of gold and the gross proceeds of mines rising rapidly, there was a decline in net proceeds that serve as the basis for taxation of the mining industry – a sure indicator that deductions were growing. In the case of one large mining company, there was a gap of 72 percent between gross and net proceeds.

Just as disturbing, we also learned that regulations adopted by the Nevada Tax Commission allowed deductions that went far beyond those permitted by state law. For years, the industry had been writing off expenses authorized by regulation that were not allowed by law.

EXHIBIT F Senate Committee on Revenue
Date: 5/18/11 page 1 of 6

State law does not allow deductions for sales taxes. Regulations adopted by the Tax Commission permit them. State law does not allow companies to deduct out-of-state expenses, including out-of-state corporate salaries. Tax Commission regulations allowed them. State law does not permit deductions for employee vacation pay, sick leave, bonuses and contributions to retirement plans. Tax Commission regulations allowed them. State law did not authorize deductions for employee housing, but the Tax Commission agreed to let mining companies take them.

Lax interpretations of the law by the Tax Commission – giving the mining industry tax breaks it was not entitled to – have cost this state millions of dollars in lost revenue. That money was and is critically needed to support education and other vital services in this state.

The amendment I am offering today to SB 493 – legislation which would create a Mining Oversight and Accountability Commission – would put an end to this.

I have made two appearances as a private citizen before the Nevada Tax Commission asking for an emergency regulation to correct the discrepancies between the regulation and the law. At its April 18 meeting, the commission told me it would work on such a regulation, but it would be phased in over time.

As both a private citizen and a member of this Legislature, I do not think that is good enough. Out of fairness to our schoolchildren and all our citizens, this is an issue we need to address now, not a year from now.

F– 2

With that background, Madam Chair and committee members, I would like to describe generally and specifically what this amendment to SB 493 would do, and how it would provide clear direction to the mining industry about what deductions it can and cannot take.

Generally, the amendment puts in statute what deductions the mining is allowed, rather than relying solely on the Nevada Tax Commission to draw up regulations, which over the years have been heavily influenced by the industry and go further than the intent of state law. Further, the amendment would give the new Mining Oversight and Accountability Commission the final say on any regulations carrying out the intent of state law regarding deductions.

State law limits deductions to specified deductions and "none other", and says deductions should be related to "actual costs," such as mineral extraction, transporting it to the place of reduction, refining and sale, and the actual costs of those processes. The statute specifically disallows deductions for the payment of salaries that are not connected with the working of a mine, the operating of a mill or smelter, or operations of facilities or equipment for transportation.

But the current regulation supporting the statute goes much further. For instance, it allows deductions for out-of-state corporate salaries not directly connected to mining operations. It allows for deductions for out-of-state corporate services, including marketing. Costs of private pension and retirement plans can be deducted. Deductions also include the cost of housing owned by a mining company for its employees. Further, the regulation was amended in 2006 to allow mining companies to deduct reclamation costs associated with actual mining operations, even though there is nothing in statute specifically authorizing these deductions.

I'd like to draw your attention to Section 12.5 of the proposed amendment, which would amend Section 362.120 of the NRS relating to deductions that can be taken by mining operations. Subsection 3a makes clear that deductions must be related to direct costs of activities within the state. Subsection 3d excludes marketing costs from deductions, and costs associated with the sales of finished gold or other minerals. Fire insurance would no longer be an allowable deduction under statute.

Subsection 3i restricts deductions for employee travel to only travel in the state that is related to mining operations. By inference, then, out-of-state corporate travel could not be deducted. Subsection 3j would allow deductions for corporate services, but only if they are Nevada-based.

That is an important point. One of the things I hope may be accomplished by this amendment is to provide an incentive for mining companies to locate their headquarters and mining support services here in Nevada – providing more jobs here rather than in some other state. Nevada is the number one gold producer in this nation, and I believe we should be the industry's first home for corporate and executive services. This would attract additional companies supporting both mining production and administration. Subsection 6e includes deductions for salaries of individuals involved in corporate services based in Nevada. Nevada-based corporate services are defined in Subsection 8 as those directly supporting mining operations, including payroll, production and cost reporting, and tax accounting.

Subsection 3k makes clear that deductions for developmental work for a mining operation are limited to actual work getting a mine ready for operation. This is line

with the overall intent of the existing law related to mining deductions – that they should be confined to actual costs of production, and none other. Subsection 31 allows in statute for mining companies to deduct their actual annual reclamation costs – because that is a legitimate post-production costs, in terms of remediating environmental consequences from mining operations.

Subsection 7 of the amendment spells out very clearly what cannot be deducted from gross proceeds to get to net proceeds – the basis for our Net Proceeds of Minerals tax. Employee housing could not be deducted; employee severance compensation could not be deducted; dues and promotional costs paid to trade organizations could not be deducted; lobbying expenses could not be deducted; mineral exploration costs could not be deducted, unless they are related to actual production; and, for the same reason, federal, state or local taxes could not be deducted.

There is one more very important element of this amendment. It is contained in Section 17.5, and goes to the issue of closing the disconnect between state law and current regulations relating to mining deductions. It says the Tax Commission shall by January 1, 2012 adopt regulations carrying out current law and what is proposed under this amendment. At the same time, the commission shall repeal any regulations that conflict with the current or amended law.

Madam Chair and committee members, I have been asked how much revenue could be raised by tightening our laws and regulations relating to mining deductions. We won't know the answer to that question until mining companies comply with what is being proposed in this amendment, and file their claims for

deductions. I suspect, though, that the state in future years will realize tens of millions of revenue from the mining industry that it otherwise might not receive.

The mining industry itself acknowledged in an April 14 letter to the Department of Taxation there are deductions it has been allowed by the Tax Commission that are not allowed by state law: for employee housing, mineral exploration, corporate costs and marketing costs.

I don't believe anyone in this state believes we shouldn't be collecting revenue we are due – given the deepening crisis in our education system and our severely constrained ability to provide our citizens with health care and other vital services.

For that reason, I urge the committee to give favorable consideration to this amendment. In the interests of fairness and accountability, I hope we can move SB 493 as amended through this legislative process – and achieve significant tax reform for our state when we need it most.

Nevada Tax Commission Testimony
April 18, 2011

Mr. Chairman and members of the commission, thank you for holding this special meeting today to address my request for an emergency rulemaking relating to mining net proceeds tax deductions.

I do believe it is clear by now – as the mining industry has acknowledged – that there are discrepancies between state law regarding deductions and regulations adopted over the years that permitted deductions not allowed by state law.

Broadly speaking, the discrepancies fall into these areas: what deductions are allowed for corporate services and employee expenses; deductions for sales taxes paid; and deductions for reclamation costs.

Since your last meeting on March 21, I have conducted additional research into these areas, and I would like to provide you with my findings. I believe they lead to the inescapable conclusion that regulations governing deductions need to be changed to reflect what is permissible in state law.

I want to stress once again that this is a critical issue for our state. We are facing the worst revenue shortfall in our state's history, one that threatens the integrity of our system of public education and our ability to provide services to our most vulnerable citizens.

In this environment, we have an obligation to make sure the state is collecting every dollar of revenue to which it is entitled – so we preserve education and other vital services.

I am looking to the Tax Commission to help us fulfill that obligation, by adopting an emergency regulation that aligns deduction regulations with state law. If that does not occur, the Legislature may have to act to correct the discrepancies in statute. That is how important this is.

I would first like to point out that current state law is clear that only expenditures "actually expended in the extraction, transportation, and reduction of ores" qualify for deductions. The law identifies "actual costs" that can be deducted as those relating to mineral extraction, transporting it to the place of reduction, refining and sale, and the actual costs of these processes.
The law limits deductions to those defined in statute "and none other."

The Nevada Tax Commission, however, has allowed deductions beyond what the law permitted – and sometimes over the objections of Department of Taxation staff. Let me give you some examples:

In April 1984, the Tax Commission held a hearing to review a regulation that prohibited mining companies from deducting expenses for out-of-state offices. That regulation fit the intent of state law that deductions had to be tied to actual mine production. The mining industry, however, sought a change in the regulation because more corporate offices – and services -- were being located out-of-state.

Minutes of the April 4 and April 5, 1984 meeting of the Tax Commission show that Department of Taxation staff recommended a regulation specifically excluding the cost of "payment for general services such as management or accounting by a central office not directly involved in the actual mining operation." Mining

H-2

companies opposed that regulation, and advocated regulations allowing deductions for out-of-state corporate offices and services. The Tax Commission concurred and changed the regulations – despite the apparent contradiction with state law.

Similarly, the Nevada Mining Association's proposed 1984 regulation included an express deduction for sales tax. Department of Taxation staff argued that taxes were not part of actual production – and should not be allowed as deductible expenses under state law. The department staff noted, "Allowing sales tax deductions would conflict with the treatment of other businesses." The Tax Commission, however, adopted the Nevada Mining Association's proposed regulation granting the sales tax deduction.

The 1984 overhaul of the deduction regulations also included changes allowing for additional employee expenses to be deducted. State law allowed only for deductions of employer-paid contributions to industrial insurance, hospital and medical attention, accident benefits and group insurance. But the regulations were broadly expanded to include the cost of compensation for employees, including vacation, sick leave and bonuses.

Deductions for employee housing had not been allowable, because they weren't in state law. But in 2001, the Tax Commission adopted a regulation allowing mining companies to deduct the "direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine ..."

Mr. Chairman and members of the commission, I have to wonder how many tens or hundreds of millions of dollars of revenue the state has lost since 1984 because

H-3

of these changes in regulation that conflict with state law. That is a number we would all like to know. But what I am asking you to do today is put a stop to this loss of revenue – by putting the regulations back where they need to be – in line with state law.

I want to mention one other aspect of this regulatory reform. Nothing in state law allows for the deduction of mining reclamation costs, but the Tax Commission adopted a regulation in 2006 permitting these deductions. I don't think many would argue that mining companies shouldn't be allowed to deduct these costs, because they are related to mining production – remediation is and should be a part of it. However, this is something that should be addressed in statute – and not strictly by regulation.

That is the point, Mr. Chairman and members of the commission. We need congruity between our laws and our regulations on something as important as revenue from the mining industry, one of the largest industries in our state. To have less is a disservice to our citizens – and particularly our education system and other services our citizens depend on every day.

H-4

Senator Horsford Statement to Nevada Tax Commission
March 21, 2011

Mr. Chairman and members of the commission, I want to thank you for calling this meeting and the opportunity to address you today on the issue of the net proceeds of mines tax.

I am the Senate Majority Leader but today I am really here as a citizen and taxpayer of Nevada. As a legislative leader seeking to resolve our state's unprecedented budget shortfall, I am committed to making sure we are doing everything we can to collect revenues that are due the state. As a citizen, I am exercising my right to petition the Nevada Tax Commission to make changes in the regulation that interprets how state law applies to deductions taken by mining companies and determining the net proceeds of minerals tax they owe the state.

Let me say at the outset that as a member of the Senate Revenue Committee, I was shocked to learn that the Department of Taxation had not conducted audits for at least two years of mining companies' claims for these deductions. We need a full and sincere commitment by the department to correct this deficiency as soon as possible, to assure the state and its taxpayers that the mining industry is paying its share of taxes to support education and other vital needs in this state.

Let me be clear on that point: The mining industry may very well be paying its taxes in full – but we have no way of knowing without audits of their books, in particular their claims of deductions that can dramatically reduce their tax liability.

EXHIBIT I Senate Committee on Revenue
Date: 5/18/11 page 1 of 4

The petition I am presenting today is fundamentally related to this issue of allowable deductions. I would like to briefly summarize the issue and request changes in regulations governing allowable deductions.

During the March 10 meeting of the Senate Revenue Committee – during which it was revealed audits had not been conducted for at least two years – some other facts came to light. First, despite the price of gold and the gross proceeds of mines rising rapidly, there was a decline in net proceeds that serve as the basis for taxation. This can only be attributed to a rise in deductions claimed to lower the net proceeds and resulting taxes owed. Second, there were large discrepancies between major mining companies in the percentage of overall deductions from gross proceeds claimed to calculate net proceeds – 72% in the case of Newmont Mining and 46% for Barrick Gold.

Again, I and other Nevada taxpayers have no way of knowing whether all claimed deductions were legitimate – and won't until audits are conducted.

But these two discrepancies caused me to examine both the state law authorizing deductions and the regulation supporting it. What I found was another apparent discrepancy – this one between the law and the regulation. Ambiguity between the regulation and the law may in fact be contributing to the widening gap between gross and net proceeds – and the differences between large mining companies in their deduction claims.

The intent of the petition I am submitting today is to align the regulation with state law.

State law limits deductions to specified deductions and "none other", and says deductions should be related to "actual costs," such as mineral extraction, transporting it to the place of reduction, refining and sale, and the actual costs of those processes. The statute specifically disallows deductions for the payment of salaries that are not connected with the working of a mine, the operating of a mill or smelter, or operations of facilities or equipment for transportation.

But the regulation supporting the statute goes much further. For instance, it allows deductions for out-of-state corporate salaries not directly connected to mining operations. It allows for deductions for out-of-state corporate services, including marketing. Costs of private pension and retirement plans can be deducted. Deductions also include the cost of housing owned by a mining company for its employees. Further, the regulation was amended in 2006 to allow mining companies to deduct reclamation costs associated with actual mining operations, even though there is nothing in statute specifically authorizing these deductions.

Based on these discrepancies between state law and the regulation, I am asking the commission to amend the regulation in the following ways:

- In line with state law, deductions for salaries should be limited to those actually involved in mining production, and not for salaries of employees working at corporate offices outside of Nevada.

- Deductions for corporate services such as marketing unrelated to actual mining operations should be disallowed.

- Deductions should be taken only for employer-paid contributions for industrial insurance premiums, health insurance for employees, unemployment insurance and Social Security benefits -- in line with the specific language in state law.

- The regulation also should be clarified to allow deductions only for employee housing that is reasonably proximate to a mine, and the distance from established communities is far enough to justify such a deduction.

- The regulation should clarify when reclamation costs can be deducted, based on their relationship to actual mining operations. The commission may need to go to the Legislature to request this authority, because current state law does not permit these deductions.

- Given the disparity of deductions between Nevada's two largest gold companies, the commission should better define what constitutes actual mine production.

Mr. Chairman, what I am proposing will give Nevadans greater confidence that the mining industry is paying what it is required to pay under current state law. To that end, I am respectfully requesting that the commission immediately commence an emergency rulemaking proceeding to amend and clarify the net proceeds of mines regulations to ensure they comport with state law, and the limitations on deductions that can be taken. The state and our citizens deserve no less.

NEVADA
Mining Association

April 14, 2011

9210 Prototype Drive
Suite 200
Reno, NV 89521
(775) 829-2121 TEL
(775) 852-2631 FAX
www.nevadamining.org

Mr. Chris Nielsen
Director
Nevada Department of Taxation
1550 College Parkway
Carson City, Nevada 89706

Dear Mr. Nielsen:

In preparation of the April 18th Tax Commission meeting, the Nevada Mining Association has conducted its own review of the Net Proceeds of Minerals tax. Below are the results of our review. Please understand that, to the best of their ability, association members comply with the statutes and regulations administered by the Tax Department. Our review has generated three categories for expenses worthy of reconsideration.

We categorized Net Proceeds of Minerals deductions into three distinct categories. They are:

1) **Deductions not mentioned in NRS 362, but allowed by the commission**
2) **Deductions mentioned in NRS 362, but are not straightforward to decipher**
3) **Deductions not specifically delineated in either NRS 362 or the regulations but allowed by the commission**

1) **Deductions not mentioned in NRS 362 but allowed by the commission.**

- Employee Housing
- Exploration
- Corporate/Regional Costs
- World Gold Council – Current estimates allow the deduction of 90% of these fees as Marketing, but some would question if that is accurate anymore and it is hard to fathom that was the intent when the statute was written many years ago.

EXHIBIT J Senate Committee on Revenue
Date: 5/18/11 page 1 of 2

2) **Deductions in NRS 362 but are not straightforward to decipher.**

- Fire Insurance - Deduction is an estimate anymore and no one sells "fire insurance" these days.

3) **Deductions not mentioned in either NRS 362 or the Regulations.**

- Miscellaneous travel – This expense is a cost we incur for employees for travel to training sessions and other things like that. On occasion travel to help other sites (in or out of Nevada), look at vendors facilities, etc. are also a part of travel and may not be relevant to the value of the mineral. It would be easier just to exclude all travel as portions of it are questionable.
- Severance – The cost of severing employees is generally an optional cost and has little to do with the current minerals being extracted.

I hope this information is helpful to you as you proceed with your evaluation.

Sincerely,

Tim Crowley
President, Nevada Mining Association

J-2

SJR 15* - 2013 of the 76th (2011) Session

Introduced on: Feb 04, 2013

By Revenue and Economic Development

Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Effect on Local Government: ***No.***
Effect on State: ***No.***

Most Recent History Action: File No. 40.

Past Hearings

Assembly Ways and Means	Mar 22, 2013	Mentioned no jurisdiction
Senate Revenue and Economic Development	Mar 26, 2013	Do pass
Assembly Natural Resources, Agriculture, and Mining	May 02, 2013	Mentioned no jurisdiction
Assembly Taxation	May 02, 2013	Do pass
Assembly Taxation	May 16, 2013	Do pass
Assembly Taxation	Jun 03, 2013	After passage discussion

Final Passage Votes

Senate Final Passage	(As Introduced)	Apr 01, 2013	Yea 17,	Nay 4,	Excused 0	Not Voting 0,	Absent 0
Assembly Final Passage	(As Introduced)	May 23, 2013	Yea 26,	Nay 15,	Excused 1,	Not Voting 0,	Absent 0

Bill Text As Introduced As Enrolled

Statutes of Nevada File No. 40

Bill History

Feb 04, 2013	Returned from Secretary of State. Read first time. Referred to Committee on Revenue and Economic Development. To printer. From printer. To committee.
Mar 27, 2013	From committee: Do pass.
Mar 28, 2013	Read second time.
Apr 01, 2013	Read third time. Passed. Title approved. (Yeas: 17, Nays: 4.) To Assembly.
Apr 02, 2013	In Assembly. Read first time. Referred to Committee on Taxation. To committee.
May 17, 2013	From committee: Do pass. Placed on Second Reading File. Read second time.
May 18, 2013	Taken from General File. Placed on General File for next legislative day.
May 20, 2013	Taken from General File. Placed on General File for next legislative day.
May 21, 2013	Taken from General File. Placed on General File for next legislative day.
May 22, 2013	Taken from General File. Placed on General File for next legislative day.
May 23, 2013	Read third time. Passed. Title approved. (Yeas: 26, Nays: 15, Excused: 1.) To Senate.
May 24, 2013	In Senate. To enrollment.
May 28, 2013	Enrolled and delivered to Secretary of State. File No. 40.

On 2014 Ballot.

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

FLOOR STATEMENT

77th REGULAR SESSION
OF THE NEVADA LEGISLATURE

SENATE JOINT RESOLUTION NO. 15
OF THE 76TH SESSION

Relates to Taxation

Summary

Senate Joint Resolution No. 15 proposes to amend the *Nevada Constitution* by repealing Section 5 of Article 10, which imposes a separate tax on the net proceeds of minerals.

Effective Date

This measure was first approved during the 2011 Legislative Session. If approved in identical form during the 2013 Legislative Session, the measure will be submitted to the voters for final approval or disapproval at the 2014 General Election.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

MINUTES OF THE JOINT MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON GENERAL GOVERNMENT

AND THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON GENERAL GOVERNMENT

Seventy-Seventh Session
March 22, 2013

A joint meeting of the Assembly Committee on Ways and Means' Subcommittee on General Government and the Senate Committee on Finance's Subcommittee on General Government was called to order by Chair Lucy Flores at 8:05 a.m. on Friday, March 22, 2013, in Room 2134 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

ASSEMBLY SUBCOMMITTEE MEMBERS PRESENT:

Assemblywoman Lucy Flores, Chair
Assemblyman Paul Aizley, Vice Chair
Assemblyman Paul Anderson
Assemblyman Andy Eisen
Assemblyman Cresent Hardy
Assemblyman Joseph M. Hogan

SENATE SUBCOMMITTEE MEMBERS PRESENT:

Senator Joyce Woodhouse, Chair
Senator Moises (Mo) Denis

SENATE SUBCOMMITTEE MEMBERS EXCUSED

Senator Michael Roberson

Minutes ID: 528

STAFF MEMBERS PRESENT:

Mark Krmpotic, Senate Fiscal Analyst
Michael J. Chapman, Principal Deputy Fiscal Analyst
Andrea McCalla, Program Analyst
Heidi Sakelarios, Program Analyst
Teri Sulli, Program Analyst
Connie Davis, Committee Secretary
Cynthia Wyett, Committee Assistant

The Committee Assistant called the roll, and a quorum of the members was present.

Chair Flores announced that the agenda would begin with the Division of Minerals' budget, followed by the Housing Division, Weatherization, Manufactured Housing, Financial Institutions, the Insurance budgets, and the Employee Management Relations Board in that order.

Chair Flores opened the hearing on the Division of Minerals' budget.

COMMERCE & INDUSTRY
COMMISSION ON MINERAL RESOURCES
MINERALS (101-4219)
BUDGET PAGE MINERALS-5

Alan R. Coyner, Administrator, Division of Minerals, Commission on Mineral Resources, introduced Michael Visher, Deputy Administrator, Division of Minerals, Commission on Mineral Resources.

Mr. Coyner reported that the Division had an approximate annual budget of $2.5 million and employed nine staff members in Carson City and two in Las Vegas. In 1999, the Legislature placed the Division under the authority of the Commission on Mineral Resources, a seven-member board appointed by the Governor to serve four-year terms. The board members represented oil, mining, gas, and geothermal industries. The Division's budget contained no General Fund money and was entirely fee-funded with 80 percent of the revenue derived from mining claim fees. Mr. Coyner commented that the agency was "sensitive" to mineral exploration in the state with gold being the dominant product.

Additionally, Mr. Coyner provided the following information concerning the Division's activities and programs:

- The agency programs encompassed "industry relations and government affairs," which covered "a wide range" of inquiries from permits and mining claims to the number of ounces of gold Nevada produced on an annual basis.

- Crews, for the Division's "Stay Out and Stay Alive" public safety program for abandoned mines, located and secured abandoned mines with fencing.

- Staff conducted outreach in the public school system to make students aware of the danger associated with abandoned mines.

- Staff conducted minerals education and workshops for teachers in Las Vegas and Reno.

- The Division of Minerals served as the official mine registry for the state and compiled data on active mines in Nevada.

- The Division permitted and monitored all oil, gas, and geothermal drilling activity on public and private land in Nevada and reviewed the engineering, configuration, and construction of the wells to ensure adequacy and safety.

- The Division administered the reclamation bond pool, which provided availability of a limited sum of money to small-scale miners to satisfy their reclamation obligation when operating on public or private land in Nevada.

Mr. Coyner referred to the budget highlights reflected on the Minerals' budget page 1 (Exhibit C) contained within The Executive Budget. The Division of Minerals' budget had not requested new positions and planned no large expenditures for the 2013-2015 biennium. The budget highlights, however, included information that the Commission on Mineral Resources would contribute approximately $285,000 over the biennium to support the Sagebrush Ecosystem Technical Team whose work would focus on sage grouse and sagebrush ecosystems. Mr. Coyner reported that although the projected expenditure for support of the Sagebrush Ecosystem Technical Team was not contemplated and occurred after the budget was submitted, he fully supported

the program and would accommodate the extra expense in fiscal year (FY) 2014 and fiscal year 2015. Listing the sage grouse as an endangered species, he said, would have a "deleterious" effect on mining and natural resource development in Nevada, and the Division of Minerals, as part of "an interagency multidisciplinary entity," would support the effort to focus on the health and vibrancy of the ecosystem.

Chair Flores asked for additional information regarding the transfer of $140,635 in fiscal year 2014 and $143,977 in fiscal year 2015 to the State Department of Conservation and Natural Resources (DCNR).

Mr. Coyner referred to the September 16, 2011, Letter of Intent (Exhibit D) [2011 Legislature] which advised the Division to reduce its reserve level over the biennium. He also referred to the document, "Sagebrush Ecosystem Program FY 13 and FY 14-15," (Exhibit E) that reflected the funding transfers that would fund the entire Sagebrush Ecosystem program. Additionally, the Division of Minerals' budget page 9 (Exhibit F), Reserve line item projected a reserve of $294,386 in fiscal year 2015, a number Mr. Coyner defined as "sensitive" because he had budgeted to have enough money to work entirely from fees. Although the projected reserve was low compared with the previously projected reserve of approximately $600,000, Mr. Coyner said he could reduce expenditures to stay within budget. He also advised that the Division had the ability to adjust the mining claim fee of which about $1.50 remained within the statutory cap. With approximately 200,000 mining claims in Nevada, he said the $300,000 could be recovered over the biennium by adjusting the mining claim fee, if necessary.

Chair Flores questioned whether the $300,000 was the funding transfer to support the Sagebrush Ecosystem program.

Mr. Coyner said that it was, reiterated his support for the program, and said that the Division of Minerals would find a way to make the program go forward.

Chair Flores asked whether the Division of Minerals would be providing any other resources to the Sagebrush Ecosystem program.

Mr. Coyner advised that other than the time the agency might spend interacting with the Sagebrush Ecosystem Technical Team to ensure the work was completed by 2015, no other resources were contemplated to be expended.

Chair Flores asked how much staff time the Division would be spending interacting with the Sagebrush Ecosystem Technical Team.

Mr. Coyner advised that Division staff would not be spending much time on the program because seven new staff had been hired for the Sagebrush Ecosystem Technical Team.

There were no further questions from Chair Flores or the members of the Subcommittees.

In a closing statement, Mr. Coyner advised that legislative bills, such as Senate Joint Resolution 15* of the 76th Session (2011) were pending that could affect the Division. If the resolution to amend the *Nevada Constitution* passed, it would remove the separate tax rate and lift the cap on mining taxes, and mining claims would no longer be tax exempt. Mr. Coyner advised that decreasing the cost of holding mining claims in the state would seriously affect the Division of Minerals because, as previously stated, 80 percent of the Division's revenue was derived from the fee on mining claims.

Mr. Coyner advised that another piece of legislation that might affect the Division was a bill that enacted provisions related to hydraulic fracturing.

Chair Flores asked whether hydraulic fracturing would create additional revenue for the account.

Mr. Coyner advised that if the legislation passed and hydraulic fracturing became a major activity in the state, the Division of Environmental Protection, DCNR, and the Division of Minerals would have to add field personnel for inspections and enforcement of regulations. He explained, however, that the Division collected a fee on oil production, and that if increased oil production resulted from hydraulic fracturing, the additional revenue could offset some of the cost of the regulating activity.

Hearing no further questions from the members, Chair Flores closed the hearing on the Division of Minerals' budget and opened the hearing on the Housing Division budget.

MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT

Seventy-Seventh Session
March 26, 2013

The Senate Committee on Revenue and Economic Development was called to order by Chair Ruben J. Kihuen at 1:07 p.m. on Tuesday, March 26, 2013, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Room 118 of the Technical Arts Building, Great Basin College, Elko, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ruben J. Kihuen, Chair
Senator David R. Parks, Vice Chair
Senator Moises (Mo) Denis
Senator Debbie Smith
Senator Ben Kieckhefer
Senator Michael Roberson
Senator Greg Brower

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senatorial District No. 11
Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley-Gonzalez, Counsel
Kevin C. Powers, Chief Litigation Counsel
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Alan H. Glover, Clerk-Recorder, Carson City
Karen Ellison, Recorder, Douglas County
Larry Burtness, Recorder, Washoe County
Eugene Mendiola, Assistant Recorder, Recorder's Office, Clark County
Michael D. Hillerby, Propel Financial Services
Lisa Hough, Propel Financial Services
Mary Belan Doggett, Propel Financial Services
Al Kramer, Treasurer, Carson City
Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada
Joe McCarthy, Comstock Residents Association
Tim Crowley, President, Nevada Mining Association
James Wadhams, Nevada Mining Association
Marla Turner
Al Martinez, President, Service Employees International Union Nevada, Local 1107; Chair, We Are Nevada
Erik Schoen, Executive Director, Human Services Network
Brian Fadie, Executive Director, ProgressNow Nevada
Jana Diamond-Pleggenkuhle
Craig M. Stevens, Nevada State Education Association
Cecilia G. Colling, Nevada Women's Lobby
Keith Uriarte, American Federation of State, County and Municipal Employees, AFL-CIO Local 4041
Astrid Silva
Randy Pease, CRA of America, LLC
Sebring Frehner
Robert Kern
Kelly Charles

Chair Kihuen:
I will open the hearing with Senate Bill (S.B.) 238.

SENATE BILL 238: Makes various changes relating to taxation. (BDR 32-973)

that would allow another party to pay off an assigned lien if the owner no longer pays the lien and is in default.

Chair Kihuen:
Are there any questions?

Senator Smith:
This bill would also apply to commercial property.

Chair Kihuen:
Are there any supporters, opponents or those neutral who would like to testify?

Al Kramer (Treasurer, Carson City):
There is not an advantage to the treasurers as far as cash flow. We collect every dime of taxes owed on property taxes. During the first year, we collect 97 percent to 98 percent of the taxes due and 50 percent of the balance is collected within 6 months at the beginning of the next fiscal year. The balance is protected by bankruptcy and may ride out for 3 years. We collect 10 percent interest on delinquencies. We are bound by statute and unable to extend more time on the delinquencies, but Propel would give the homeowner more time to pay off the taxes. This program would benefit commercial property owners as well.

Chair Kihuen:
For the record, are you neutral on S.B. 301 with the amendment?

Mr. Kramer:
Yes.

Chair Kihuen:
I will close the hearing on S.B. 301 and open the hearing on Senate Joint Resolution 15 (S.J.R.) of the 76th Session.

SENATE JOINT RESOLUTION 15 OF THE 76TH SESSION: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Kevin C. Powers (Chief Litigation Counsel):
We are a nonpartisan staff, and we do not support or oppose any legislation. We provide the Legislature with legal advice and counsel regarding the legal effect and consequences of legislation. I will cover an overview of S.J.R. 15 of the 76th Session (Exhibit G), a proposed constitutional amendment under Article 16, section 1 of the Nevada Constitution. This proposed constitutional amendment passed the 76th Session and needs to pass during the 77th Session; if that occurs, it will go on the ballot for the 2014 general election. If the voters ratify S.J.R. 15 of the 76th Session, it will become part of the Nevada Constitution.

Two changes will occur with the passage of S.J.R. 15 of the 76th Session. Article 10, section 1 of the Nevada Constitution establishes a property tax in Nevada. There is an exception in Article 10, section 1, subsection 1 that provides mines and mining claims be exempt from the property tax and shall be assessed only as provided in Article 10, section 5. The resolution does two things. It would remove the exception; therefore, mines and mining claims would be subject to the property tax if there were no other exception in the Constitution.

It would also repeal Article 10, section 5 that governs taxation on mines and mining claims in the Constitution. Currently, it provides that the Net Proceeds of Minerals Tax (NPOMT) must not exceed 5 percent, and it provides that no other tax may be levied on minerals until the identity of the mineral is lost. Article 10, section 5 also provides for exception from taxation for unpatented and patented mines and mining claims. Those claims are currently exempted. With the repeal of the exception, in Article 10, section 1, subsection 1 and Article 10, section 5, the control of the taxation on mines, mining claims and minerals would be governed by the laws the Legislature determines appropriate.

Senator Brower:
I have read the minutes from the 76th Session. Legislative Counsel Brenda Erdoes testified in this Committee on the resolution. Given the statement, "If this were passed this Session, nothing would change in terms of how taxes are paid by the mining industry," Ms. Erdoes answered, "That is correct." Do you agree with her statement?

Mr. Powers:
I do agree.

Senator Brower:
The next question was, "If this were passed the second time in 2013, nothing would change?" Ms. Erdoes responded, "That is correct." Do you agree with her statement?

Mr. Powers:
I would agree.

Senator Brower:
Finally, she was asked, "If approved by the voters, nothing would change unless the Legislature changed the way mining was taxed." Ms. Erdoes responded, "That is correct. *Nevada Revised Statutes* (NRS) 362 is the statute that implements the provision when changed by the Legislature." Do you agree with her statement?

Mr. Powers:
I would agree. For the record, I need to provide elaboration on legal counsel's opinion about how S.J.R. 15 of the 76th Session will affect existing statutory provisions governing the taxation of mines. The legal issue is whether the repeal of the constitutional provisions will also repeal by implication the statutory provision governing the taxation of NPOMT. Our opinion is because there is another source of constitutional authority to support the NPOMT, Article 10, section 1, subsection 6, the resolution would repeal it in the Constitution and not in the existing statutory provisions.

Chair Kihuen:
Any questions? We will start with the proponents.

Michael Ginsburg (Southern Nevada Director, Progressive Leadership Alliance of Nevada):
A provision that does not allow the Legislature or the people of the State to decide how the mining industry is taxed has no place in the Nevada Constitution. Senate Joint Resolution 15 of the 76th Session is not about taxes, it is about allowing the people of Nevada the ability to determine whether the mining industry will remain in the State Constitution with these protections. Over the last 4 years, fewer than 30 mines in the United States have produced over 99 percent of the gold. Each year of the 4 years, 75 percent of these mines were located in Nevada. Finding precious metals is getting to be more difficult because all of the surface gold has been mined away and sold. With the

quality and quantity of gold in Nevada, our grade remains one of the highest in the world. The World Gold Council and the International Monetary Fund will tell you that Nevada has high quality minerals.

Mining taxes and regulations in the United States and Nevada are taxed at an effective rate of around 1 percent. The mining industry has said with the record high price of gold, it should not be taxed because of the possibility of the price going down. When the economy is stronger and tourism and gaming are doing well, those industries will take care of the taxes—mining will not pay as much. Conversely, when the economy is doing poorly, with tourism and gaming suffering—mining will pay more if the price of gold goes up. Historically, that is not the case. Mining has paid more, but not significantly more, contributing around $100 million to the State's General Fund. Because of the provision in the State's Constitution, the State has lost revenue during the record price of gold over the last few years.

Nevada has some of the highest quality mines in the industry. The Barrick Cortez mine is ranked as the largest low-cost mine in the world. The idea of Barrick leaving the State is not true. In Alaska, the mineral severance tax-sometimes as high as 50 percent—has produced billions in tax revenue from the minerals industry to fund the state. The citizens of Alaska receive checks from the excess. Alaska has produced 40 million ounces of gold in their state's history, whereas Nevada has produced more than that in the last 8 years.

In 2005, the mining industry pumped out a little less than 100 million gallons of water from the aquifers in northern Nevada every day. This is more water than the Southern Nevada Water Authority sought to pump out of the Great Basin with its initial pipeline plan. The Environmental Protection Agency and the Bureau of Land Management estimate it will take 200 years to repair damage to the land and water aquifers.

Joe McCarthy (Comstock Residents Association):
I have prepared testimony in favor of the bill (Exhibit H).

Chair Kihuen:
Any questions? I would like to invite the Nevada Mining Association to testify.

Tim Crowley (President, Nevada Mining Association):
Nevada's mining industry maintains its concern stated during the 76th Session

that the passage of S.J.R. 15 of the 76th Session may cause significantly less revenue for State and local governments. It creates instability within the mining industry and will upset a system that has provided disproportionately large tax contributions. To the allegation that mining does not pay its fair share, mining pays four times that of an average Nevada business. Tax contributions of the mining industry represent two times our economic footprint. We represent 4.4 percent of the economy and contribute 8.3 percent to the General Fund. To refute the allegation that Nevada is the most tax-friendly State toward mining companies: a mine in Nevada has higher tax overhead than a similarly sized mine in New Mexico, Arizona, Alaska, Wyoming or Idaho. Colorado, California, Montana and Utah have greater tax burdens, but the difference is negligible.

The statement that mining is the only industry mentioned in the Constitution is not true. While mining is singled out to pay more, some industries such as warehousing and securities, are exempted from some taxes in the Constitution. As for the belief the Constitution protects mining from taxation, it does not protect the industry but calls for a guaranteed stream of revenue above and beyond the taxes imposed on all industries including mining. Those taxes are sales and use, property and payroll. If a new general tax is imposed this Session, the Constitution would not protect mining, and we would participate with all businesses.

In 1989, the Legislature and the voters agreed to raise mining taxes. Passage of S.J.R. 15 of the 76th Session would repeal that tax increase. In 1989, the Legislature and voters agreed on an amendment that would provide a 300 percent increase in mining taxes, which would be deleted by passage of this resolution.

Mining is paying twice what it would if it were manufacturing consumer goods as opposed to extracting raw materials. In 2011, mining paid $170 million in other taxes, and the NPOMT required mining to pay an additional $250 million. Passage of S.J.R. 15 of the 76th Session puts the $250 million in question and puts in question mining participation beyond sales and use, property and payroll taxes. Mining maintains undoing the current structure may cause less revenue, more instability and upset a system that is providing disproportionately large contributions from the mining industry.

Chair Kihuen:
Any questions, Committee?

Senator Roberson:
I am confused. Are you here as neutral, or are you opposed to this provision?

Mr. Crowley:
Our position on S.J.R. 15 of the 76th Session is we believe it is a mistake. The suggestion is if you say it is a tax decrease on your industry, then you should support it. We cannot support it because we maintain it is a tax decrease in the counties in which we live. It is a decrease in the State in which we support essential services. Some have suggested we should oppose this measure because of the hardship that it would create to local governments. We maintain it is a mistake.

Senator Roberson:
I did not receive an answer—are you neutral or opposed?

Mr. Crowley:
I am sticking with my answer.

Senator Roberson:
That is not an answer. Are you neutral or opposed?

Mr. Crowley:
We have been neutral in a sense that if people want to pin us down on a position for the bill, we think it is a mistake.

Senator Roberson:
We all take positions every day, and I am asking you for a simple position. Are you neutral or opposed?

Mr. Crowley:
We think it is a mistake.

Senator Brower:
We understand where you are coming from. It appears in 2011 that the Mining Association was neutral on S.J.R. 15 of the 76th Session. Is that correct?

Mr. Crowley:
Yes.

Senator Brower:
I do not see anywhere in the record where the Association described S.J.R. 15 of the 76th Session as a mistake. So you are somewhere between neutral and a mistake?

Mr. Crowley:
We maintained this could result in a decrease in revenue to local governments and the State.

Senator Brower:
It is an interesting point. We have discussed it, debated it, and legal counsel tells us it is not the case.

Senator Roberson:
We will assume for argument's sake that your legal position is correct and your concern is that the taxpayer will not receive as much revenue. Does that mean you are prepared to sue the State over this issue?

Mr. Crowley:
I cannot answer for the individual companies within the industry, but there is a system that would not require litigation to decide fair market value of property. It involves the State Board of Equalization, and we would pay the taxes due to us.

Senator Roberson:
Assuming the Board of Equalization determines that you have to continue to pay taxes in the same manner that you have been—will you sue the State over that issue?

Mr. Crowley:
I cannot answer the question. That would be left to the companies in the Association.

Senator Roberson:
Do you have a personal opinion? Would you recommend to your membership in the industry to sue the State?

Mr. Crowley:
No, I would not.

Senator Denis:
You have said it is a mistake because it would reduce revenue to local government. Would you elaborate?

Mr. Crowley:
Our opinion is that if we were to be treated as all property taxpayers, we would revert to a tax situation where the local governments would assess their taxes on a county rate as opposed to the 5 percent constitutional maximum. It is not clear, and our lawyers have not made it clear, whether it is assessed on 100 percent of assessed valuation or 35 percent.

Senator Denis:
Do you think it will have an impact on State government?

Mr. Crowley:
Attorneys are also debating that, and it is not clear. The State component did not change until the Constitution changed in 1989. If that is repealed, there is an interpretation that the State component shall cease.

Senator Denis:
This is all based on your legal opinion?

Mr. Crowley:
Yes.

Senator Brower:
If your legal theory is correct on the impact on tax collection by the counties and the State and S.J.R. 15 of the 76th Session passes, is it not true the Legislature would have the flexibility and the power to adjust and change the way mining is taxed to eliminate the decrease in taxation?

Mr. Crowley:
I would argue that you have the ability today; you have the ability to tax mining with sales taxes and the NPOMT.

Senator Brower:
Without the passage and adoption by the voters, we cannot change the NPOMT.

Mr. Crowley:
The Legislature made changes to the NPOMT during the 76th Session.

Senator Brower:
That was because of the statutory change in the deductions.

Mr. Crowley:
Yes.

Senator Brower:
With respect to the 5 percent cap, without the passage of S.J.R. 15 of the 76th Session and the adoption by the voters, we cannot change the 5 percent.

Mr. Crowley:
It is my understanding that all property taxpayers in the State have the protection of the 5 percent cap on their property taxes.

Senator Brower:
I am trying to be very clear. Without S.J.R. 15 of the 76th Session, the Legislature cannot change the 5 percent cap on NPOMT in the Constitution.

Mr. Crowley:
There will be a 5 percent cap on all property tax with or without S.J.R. 15 of the 76th Session passage.

James Wadhams (Nevada Mining Association):
One of the key pieces is the language we are talking about in S.J.R. 15 of the 76th Session. As Mr. Powers identifies, it repeals the words "except mines and mining claims" out of Article 10, section 1 and repeals section 5 in its entirety. Senate Joint Resolution No. 22 of the 64th Session amended the State's Constitution with the passage of Ballot Question No. 1 from the Special Election held on May 2, 1989 (Exhibit I). Section 5 is the exact language that appears in Article 10, section 5, Exhibit I, in Ballot Question No. 1. It was passed by the voters, as Mr. Powers indicated, and that language would be repealed with S.J.R. 15 of the 76th Session.

Former Secretary of State Frankie Sue Del Papa, in writing the argument for passage, said, "This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes." Senate Joint Resolution 15 of the 76th Session reverses that action. Repealing of an increase creates uncertainty. The mining industry faces a federal bill with economic impact and the teacher's 2 percent margin tax, which will be on the ballot. The mining industry has the uncertainty of the price of minerals and the cost of extraction. In addition, the Legislature has been discussing taxation on mining or minerals, which adds to the uncertainty.

This resolution does create uncertainty for the industry and the State. If the language is repealed, the most stunning element of the repeal puts minerals back into the Constitution. As Mr. Powers pointed out, that provision, Article 10, section 1, in Exhibit I, states, "The legislature shall provide by law for a uniform and equal rate of assessment and taxation ... for taxation of all property, real, personal and possessory." That will be the resulting language constraining decisions this body might make. The constitutional separation between the appropriations of the counties and State will disappear. The question as to whether the State or the counties will benefit or be burdened by the change in the repeal is an issue for local governments that are beneficiaries of the tax distribution.

People say mining is the only industry identified and protected by the Constitution. Exhibit I shows that stocks, bonds, personal property in warehouses and business inventories are exempt in our Constitution. They also say mining is not paying its fair share because it is protected by the Constitution. The limitations in section 5 and in section 1 are related to the property value, not the profitability, payroll or any other gain from mining's economic activity.

Chair Kihuen:
Do you feel mining is paying its fair share to the State?

Mr. Wadhams:
Yes.

Chair Kihuen:
Why is that?

Mr. Wadhams:
I was here in 1989 when the tax on property value was raised from the same rate that all other businesses pay on their properties to the 5 percent constitutional maximum. We went through the property tax shift in 1981, which lowered the property tax rates. The effective tax rate is approximately 1 percent and mining pays 5 percent.

Chair Kihuen:
What would you say to the people who say other states are paying as much at 30 percent and in Nevada, mining is paying only 5 percent?

Mr. Wadhams:
If you compare the hard rock mining tax rates in our region or across the Country, Nevada falls in the middle.

Chair Kihuen:
You do feel the mining industry has contributed and is paying its fair share in the State?

Mr. Wadhams:
Yes. It is said that mining needs to be taken out of the Constitution, but S.J.R. 15 of the 76th Session does not do that. It puts mining back into the Constitution where in Article 10, section 1 it will be required to be treated like all other property owners. There are documents where the U.S. Supreme Court has interpreted the phrase "uniform and equal," and the U.S. Supreme Court has interpreted the phrase "just valuation." The mineral property will go back into the Constitution, which does not protect mining from the payroll tax, margins tax, net business income tax; it deals with the value of the property. It is also said that mining has a capped rate, which is a reference to section 5 of Article 10. Section 2 of Article 10 states "The total tax levy for all public purposes including levies for bonds, within in the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation."

The 5 percent cap applies to all property owners of all property real, personal and possessory. The repeal of S.J.R. No. 22 of the 64th Session language repeals the tax increase of 1989 and put us back into the Constitution. What people say does not become true because it has been repeated frequently. The major mining companies are publicly traded; their information is on the Web. If there were large profits, shareholders would be looking for larger dividends.

I would like to put documents into the record: the vote on S.J.R. 15 of the 76th Session in 2011 (Exhibit J); text of Ballot Question No. 1 in 1989 (Exhibit K); the text of S.J.R. 15 of the 76th Session (Exhibit L); text of Article 10 of the Nevada Constitution, sections 1 and 2 (Exhibit M); and decisions of four Nevada Supreme Court cases (Exhibit N).

Senator Kieckhefer:
Is it your belief that if the voters approve S.J.R. 15 of the 76th Session in 2014, the Legislature would have the constitutional authority to enact NRS 362?

Mr. Wadhams:
Yes, the passage of S.J.R. 15 of the 76th Session by the voters does not repeal NRS 362. The Legislature would have the authority to deal with it at that point.

Senator Kieckhefer:
Do you believe the statutory provisions of NPOMT would be repealed by implication? We would still have constitutional authority for the statute to be in place.

Mr. Wadhams:
The method described in the statute on the valuation of the minerals, the method of collection and timing of collection including the prepayment would stay in place. If the Constitution is amended to place all property at a uniform and equal rate in the county, the county rate would be applied to the NPOMT as opposed to the 5 percent that would have been repealed.

Senator Kieckhefer:
The only way to tax minerals is as property.

Mr. Wadhams:
Would you repeat the question?

Senator Kieckhefer:
Is your position that the 5 percent rate would have to be reduced to the county rate? That would create the gap we are talking about. We would have to continue to consider NPOMT as a property tax rather than a proceeds tax or change it to a gross proceeds tax. The argument hinges on the definition taxing the mining industry on a property basis.

Mr. Wadhams:
There is no protection that mining enjoys against any other form of taxation. The Constitution has that the mineral property can only be taxed once. The tax rate is 5 percent. If we repeal the provision, it cannot be taxed more than once because we still have Article 10, section 2, but you are not precluded from considering a margins tax, net business income tax, payroll tax or any other type of taxation. The activity of mining is not exempt from taxation.

Senator Kieckhefer:
The NPOMT can be something other than a property tax?

Mr. Wadhams:
If you want to create a profits tax, the Legislature can do it. You would have a problem with Amendment 14 in the U.S. Constitution. The type of taxation on the activity of mining is not restricted by the Constitution.

Senator Kieckhefer:
If we were to statutorily exempt a mineral from ad valorem assessment and then add a proceeds tax, the mineral would not be taxed twice.

Mr. Wadhams:
All property, real, personal and possessory has to be taxed uniformly and equally. That precludes the Legislature from declaring a rock no longer property.

Senator Kieckhefer:
We exempt things from assessment through an assessment process. We are talking about taxable value to assessed value. If we said we are not going to be considering potential or claim deposits as part of the taxable value, can the Legislature consider that approach?

Mr. Wadhams:
The Legislature has the power under Article 10, section 1, subsection 6 to exempt personal property. To change the character of property may require another constitutional amendment.

Senator Brower:
The bottom line is if S.J.R. 15 of the 76th Session is adopted and the current 5 percent NPOMT rate is repealed, it could be replaced with something else.

Mr. Wadhams:
The activity of mining is not protected from taxation. Other forms of taxation are not precluded. The issue of Article 10, section 1 and the uniform, equal and just valuation is itself a body of constitutional law that would have to be considered. It has nothing to do with profits, payroll or anything else.

Senator Brower:
Without S.J.R. 15 of the 76th Session when it comes to the NPOMT on mining, it is 5 percent. There is nothing the Legislature can do about it.

Mr. Wadhams:
Yes. You have the right under that provision of the Constitution to tax at less than 5 percent.

Senator Brower:
We understand what we are talking about.

Senator Roberson:
I have respect for your intelligence, but I am not sure you have respect for our intelligence. I think you have misled the Committee on the agreement and legal opinion between Mr. Powers and yourself. I want to address the constitutional amendment from a quarter century ago. You made the argument that the taxes increased on mining, but the reality is mining wanted the amendment. The key proponent for reforming taxation on mining, the late Marvin Sedway, voted against that language. What the amendment did was strengthen the protection on mining in the Constitution. That is what we are trying to repeal this Session.

> I would like to quote the words of Steve Wynn, who testified on the amendment: "The reason I am here and I have this sense of urgency in my voice is because I have fear that like other things that have happened in the State of Nevada recently, this is an attempt for one sector of the economy to insulate itself against its fair share."
>
> He goes on to say, "This sort of thing has got to come to a halt; you have to take an intelligent, close, careful look at how you are going to face the future." And then this next statement he makes is particularly appropriate today. He said, "I am not here to deprecate, but when rhetoric is used to confuse the process of

> government, then it is time to get into something of a public debate. So I am going to give you the other side of the story."
>
> And he is referring to the legislation that amended the Constitution a quarter century ago. He said, "This was a lousy piece of legislation from the get-go. Yes, it was right to try and correct the inequity of the taxes with regard to the mining industry, but I do not think we have done a very good job of it."

I respect the intelligence of Steve Wynn and I respect yours, Mr. Wadhams. I understand you have a job to do, and you do it well. I understand you are an advocate, and I understand there is room for reasonable disagreement, but it is important to put this perspective in the record. There will be time to get into all the legal arguments if the mining industry decides to sue the State. Many of us are educated; we have read the legal opinions of the Legislative Counsel Bureau; and we have studied the issue. We are not convinced by your arguments.

Chair Kihuen:
We are going back to the supporters of the bill.

Marla Turner:
I have prepared testimony (Exhibit O). In conclusion, it is time to finish what Assemblyman Marvin Sedway started in 1987, not because he was my stepdad but because it is the right thing to do.

Al Martinez (President, Service Employees International Union Local 1107; Chair, We Are Nevada):
I have prepared testimony (Exhibit P).

Erik Schoen (Executive Director, Human Services Network):
A year and half ago, we identified our top three health and human services advocacy priorities which were access to health care, mental health and employment. Last month, we asked our members to list their top three legislative priorities for this Session. Their top priority was S.J.R. 15 of the 76th Session. I found it interesting that this would be the biggest concern for a group of health and human services providers. They have budgets they have to manage, and they know the value of a diverse budget, which allows them to provide the services as needed. They understand tax revenues are

unpredictable in the State, and S.J.R. 15 of the 76th Session makes mining pay taxes in accordance with other industries. We support this resolution.

Brian Fadie (Executive Director, ProgressNow Nevada):
We would like to thank the Senators Kihuen, Parks, Denis, Kieckhefer, Roberson and Smith for voting in favor of S.J.R. 15 of the 76th Session in the previous Legislative Session. Being here today is one step closer to a fair tax system in Nevada. I would like to thank Senator Brower for comments that indicated potential support of this resolution.

Jana Diamond-Pleggenkuhle:
I am here in support of S.J.R. 15 of the 76th Session. For the future of the State, we cannot do things the way we have been for the past century, and mining needs to pay its fair share.

Craig M. Stevens (Nevada State Education Association):
Senate Joint Resolution 15 is about fairness. All businesses should be held to the same standard. We believe this resolution passed by the voters will allow the Legislature to look at all streams of revenue equally. If this resolution passes, we know the Legislature will develop a solution for tax fairness in the industry. A positive vote on this resolution allows the voters to decide mining's constitutional protection. The Nevada State Education Association supports this resolution.

Cecilia G. Colling (Nevada Women's Lobby):
The Nevada Women's Lobby supports women and family issues. We support S.J.R. 15 of the 76th Session because we need to be looking at each business to address the problems we have in Nevada.

Keith Uriarte (American Federation of State, County and Municipal Employees, AFL-CIO Local 4041):
We support S.J.R. 15 of the 76th Session. It is time for Nevada to stop being a third-world State. The effect of exploitation is not limited to minerals. If mining is concerned about family values, it is time to invest in the future of the State.

Astrid Silva:
Our State has changed because of the severity of mining. The wounds on the land will be visible for centuries. What will be the reward for Nevada having to endure this toll? I am in support of S.J.R. 15 of the 76th Session.

Randy Pease (CRA of America, LLC):
If I own a piece of land, I pay property tax; if I decide to operate my business off the land, I also pay business tax. Mining does not have to do the same.

Sebring Frehner:
I support S.J.R. 15 of the 76th Session and thank the Committee for moving this legislation forward and letting the voters decide.

Robert Kern:
I support S.J.R. 15 of the 76th Session. Nevadans understand there will always be a tax burden. The question is who bears the tax burden? When mining companies do not have to pay the same as other businesses in Nevada, small business and the people of Nevada, have to bear mining's share of that burden. My business involves providing services to the people of the State. Why should I be taxed more heavily than a business taking natural resources out of Nevada for the profit of an foreign incorporation? The idea of requiring uniform taxation means you cannot tax the extraction of minerals seems intellectually dishonest.

Kelly Charles:
Enacting S.J.R. 15 of the 76th Session would open mining up to some sort of taxation. An alternative would be to tax the displacement of the ore or dirt. It would be easy to track because we could attach it to the prevailing 90-day average of gold. In researching through NRS, I see no reason why it could not be done.

Chair Kihuen:
If you are in support of S.J.R. 15 of the 76th Session, please raise your hands in Las Vegas. Any opposition, please raise your hands. For the record, the majority of people in Las Vegas are in support. Is there any public comment?

> SENATOR PARKS MOVED TO DO PASS S.J.R. 15 OF THE 76th SESSION.
>
> SENATOR ROBERSON SECONDED THE MOTION.

Senator Brower:
The debate today was welcomed and of great value. Sometimes the debate can become distorted, and it is important as we move forward with tax policy that it makes sense not to let it become distorted. Mining companies do pay taxes, and

they pay a lot of taxes. The issue with S.J.R. 15 of the 76th Session is whether mining tax policy should be determined by an old restriction in the Constitution or whether it should be decided by this Legislature—the representatives of the people. We are talking about giving the voters a chance to say the restrictions, eliminations and the cap in the Constitution should be removed. The representatives in Carson City should be able to make the decision session to session. There will be other debates on how we tax mining going forward. I voted against this legislation during the 76th Session. My opinion has evolved as I have studied the legal opinions, and bringing taxation control back to the Legislature is the right thing to do. I will be voting yes.

Senator Denis:
I supported this legislation during the 76th Session, and I did not hear anything today that would change my vote. I will support it again.

Chair Kihuen:
I want to thank my colleagues for coming together in a bipartisan way, and I think that is what Nevada voters want to see.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Assemblyman Ira Hansen, (Assembly District No. 32):
This Committee does not have a person representing rural Nevada where all the taxes are paid. In 1954, we passed a law so we would not tax inventory in warehouses. In 1960, when we put into the Constitution a protection to ensure inventories would not be taxed, we had a huge expansion of the warehouse industry, and that protection remains in the Constitution today. One of the problems Nevada has had in developing our economy is our tax policy. With the uncertainty, we have a hard time getting businesses to relocate to Nevada.

People say Nevada has the gold; the reason we know is that the industry we are taxing has invested billions of dollars exploring to find the gold. Mining knew we had a protection in the Constitution that would allow them to make a profit on the investment. The reason we do not see a big gold industry in California is that the regulatory and tax climate discourages people from investing in exploration. We need to be careful with this one because we are going to ruin the golden opportunity to have tax revenue. A decade ago, the economy in

Winnemucca and Elko had collapsed because the price of gold had collapsed. The mining industry is highly volatile to these kinds of swings. We have tried to come up with a balanced way of assessing taxation to ensure we have stable revenue source. If we have a substantially large increase in mining taxes, we are going to have a bigger financial mess because of the potential instability. The price of gold is high now, but it will change. It always has.

Ms. Turner:
I want to thank the Committee for your action on S.J.R 15 of the 76th Session. In 1989, S.J.R. No. 22 of the 64th Session passed, it passed in the rural counties at a rate of 3 to 1. The mining industry that paid more taxes has done fine.

Chair Kihuen:
With no further business to come before the Senate Committee on Revenue and Economic Development, the meeting adjourned at 3:12 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Ruben J. Kihuen, Chair

DATE:

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

RICK COMBS, *Director*
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
MOISES DENIS, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Senator, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

February 22, 2013

Senator Michael Roberson
Senate Chambers

Dear Senator Roberson:

You have asked this office several questions relating to the taxation of mines and mining claims in connection with the constitutional amendment proposed by Senate Joint Resolution No. 15 (S.J.R. 15), which the Legislature passed for a first time during the 2011 legislative session. 2011 Nev. Stat., file no. 44, at 3871-72. In order for S.J.R. 15 to become effective as an amendment to the Nevada Constitution, it must be passed by the Legislature a second time, and it must be approved and ratified by the voters at the next general election in 2014, unless the Legislature authorizes a special election for that purpose. Nev. Const. art. 16, § 1; NRS 218D.800 & 218D.805.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1) of the Nevada Constitution. 2011 Nev. Stat., file no. 44, at 3871. In addition, S.J.R. 15 will repeal the provisions governing the taxation of mines and mining claims set forth in Article 10, Section 5 of the Nevada Constitution. Id. at 3872. In light of these proposed constitutional revisions, you have asked the following questions:

1. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?

2. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

3. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

The legal issue that is central to your first two questions is whether the repeal of the constitutional provisions in Article 10 governing the taxation of mines and mining claims will also repeal by implication: (1) the existing statutes governing the net proceeds tax in NRS Chapter 362; or (2) the existing statutes exempting patented and unpatented mines and mining claims from the property tax in NRS Chapter 361. After considering your questions in light of the fundamental rules of constitutional and statutory construction, we have come to the following conclusions.

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

Unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8), which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

BACKGROUND

I. Overview of the existing provisions of Article 10 of the Nevada Constitution regarding the taxation of mines and mining claims.

Under the existing provisions of Article 10, Section 1(1), the Legislature may not impose a property tax on mines or mining claims except as authorized by Article 10, Section 5. Based on the existing provisions of Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost. In addition, the

existing provisions of Article 10, Section 5 provide for specialized tax treatment of patented mines and mining claims. To better understand these constitutional provisions governing the taxation of mines and mining claims, we believe it will be helpful to provide a brief explanation of patented and unpatented mines and mining claims.

Under American mining law, a person may enter certain public lands to search for, discover and locate valuable mineral deposits for the purpose of establishing ownership interests in any such deposits that are found. 1 American Law of Mining § 30.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person discovers a valuable mineral deposit and completes the required acts of location in accordance with law, the person acquires rights to an unpatented mining claim, which is a possessory interest in a particular area of public land solely for the purpose of mining. Id. at § 30.05[6]; 30 U.S.C. § 612(a); N. Alaska Envtl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007). A person who acquires rights to an unpatented mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011) (citing 30 U.S.C. § 612(b)).

A person who holds a valid unpatented mining claim may, but is not required to, apply for a mineral patent to obtain fee title to the land from the government. 1 American Law of Mining § 30.06[2] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person's mining claim is patented in accordance with law, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. Id. at § 30.06[5]; Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996).

Under the existing provisions of Article 10, Sections 1(1) and 5, unpatented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive. By contrast, patented mines or mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive.

II. Historical overview of the taxation of mines and mining claims in Nevada.

Throughout Nevada's history, there has been considerable debate concerning the proper approach to tax mines and mining claims. See Political History of Nevada, 103, 106-07 (11th ed. 2006). This difference in opinion has resulted in the passage of various constitutional and

statutory provisions regarding the taxation of mines and mining claims. Because these prior constitutional and statutory provisions offer important historical insight into the constitutional revisions proposed by S.J.R. 15, we believe it will be helpful to provide a brief historical overview of the taxation of mines and mining claims in Nevada.

A. The taxation of mines and mining claims by Nevada's Territorial Legislative Assembly.

During the years preceding adoption of the Nevada Constitution in 1864, there was a sharp divide in the Territory of Nevada between mining interests and agricultural interests over the proper approach to tax mines and mining claims. See State v. Eastabrook, 3 Nev. 173, 178 (1867). The mining interests believed that mines and mining claims should be exempt from taxation and that, if any taxation was to be imposed on mining operations, only the proceeds from productive mines and mining claims should be assessed and taxed. Id. The agricultural interests believed that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. Id.

During the first session of Nevada's Territorial Legislative Assembly in 1861, the Legislative Assembly exempted "[m]ining claims" from property taxation. 1861 Nev. Laws, ch. 50, § 4, at 146. During its second session in 1862, the Legislative Assembly narrowed the exception so that it applied only to "[u]nproductive mining claims." 1862 Nev. Laws, ch. 124, § 4, at 132. However, during its third and final session in 1864, the Legislative Assembly removed the exemption for mining claims and provided that "mining claims and possessory rights thereto" were subject to property taxation. 1864 Nev. Laws, ch. 35, § 2, at 38.

The validity of the 1864 territorial law that taxed possessory rights in mining claims was challenged in an action heard by the Nevada Supreme Court after Nevada became a state. Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104 (1865). The mining company claimed that taxation of its possessory rights in mining claims located on property owned by the Federal Government violated the Act of Congress organizing the Territory of Nevada which provided that "no tax shall be imposed upon the property of the United States." 12 Stat. 209, 211, § 6 (1861). The court determined that "a Territorial Legislature may tax any species of property, whether real, personal, or mixed, corporeal or incorporeal, so far as they are not restrained by the Organic Act." 1 Nev. at 107. Because case law had "universally treated the possessory rights of the miner as an estate in fee," the court concluded that such possessory rights were a taxable species of real property in Nevada because the miner's possessory rights in the underlying minerals were separate from the Federal Government's ownership of the land. Id. at 106-07.

Even though the Hale & Norcross case involved the interpretation of the Act of Congress organizing the Territory of Nevada, we believe that case is equally applicable to the

interpretation of the Nevada Constitution because Nevada's organizing act operated as the constitution for the Territory of Nevada before its statehood.[1] Therefore, we believe the Hale & Norcross case stands for the proposition that a person's possessory rights in mining claims must be taxed as real property in Nevada unless there is an exemption from such taxation authorized by the Nevada Constitution.

B. The taxation of mines and mining claims under the constitution proposed by Nevada's first constitutional convention in 1863.

The Territory of Nevada held its first state constitutional convention in 1863, where the debate over the proper approach to tax mines and mining claims commanded much of the delegates' attention. See Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada, 225-29, 239-52, 264-81 (1972). The constitutional convention ultimately approved the following provision:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, *including mines and mining property*[.]

Id. at 429 (emphasis added).

Based on its proposed constitutional language, Nevada's first constitutional convention adopted the approach that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. However, the first constitutional convention's approach to the taxation of mines and mining claims was met with great public opposition, and the voters of the Territory of Nevada rejected the proposed constitution. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178, 185 (1912).

C. The taxation of mines and mining claims under Article 10 of the Nevada Constitution.

The Territory of Nevada held its second state constitutional convention in 1864, where the debate over the proper approach to tax mines and mining claims continued with vigor. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State

---

[1] See Nat'l Bank v. County of Yankton, 101 U.S. 129, 133 (1880) ("The organic law of a Territory takes the place of a constitution as the fundamental law of the local government."); Carter v. Gear, 197 U.S. 348, 353 (1905) ("the Organic Act stands in the place of a constitution for the Territory of Hawaii, to which its laws must conform."); Trustees of Sch. Dist. No. 1 v. County Comm'rs, 1 Nev. 334, 340-41 (1865) (striking down certain territorial laws enacted in violation of Nevada's organic act).

Constitutional Convention of 1864, 222-30, 318-87, 405-33, 436-47, 499, 500, 513-21 (1866). The second constitutional convention ultimately approved the following provision, which was ratified by the voters as Article 10, Section 1 of the Nevada Constitution:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed*[.]

Nev. Const. art. 10, § 1 (1864) (emphasis added).

In one of its earliest cases interpreting Article 10, Section 1, the Nevada Supreme Court stated that the provision, as ratified in 1864, embraced two main propositions:

> First, that all property assessed for an ad valorem tax should be liable to pay the same percentage; second, that unproductive mines should be entirely free from taxation, whilst those which were productive should pay the regular ad valorem tax on the products, instead of the same tax on the body of the mine itself. There can be no doubt but it was the intention that the entire product should be taxed, in lieu of the body of the mine. This property is different from all other property in the State.

State v. Eastabrook, 3 Nev. 173, 178 (1867).

The provisions of Article 10, Section 1 governing the taxation of mines and mining claims were amended in 1902, 1906 and 1989. In 1902, the voters ratified an amendment that required patented mining claims to be assessed and taxed at a valuation of $10 per acre. This real property tax on patented mining claims was imposed in addition to the taxes collected on the proceeds of the patented mining claims. Specifically, the 1902 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed, but the acreage of patented mining claims shall also be assessed at a valuation of ten dollars per acre*[.]

Nev. Const. art. 10, § 1 (1902) (emphasis added).

In 1906, the voters ratified an amendment which repealed the prior 1902 amendment and which required patented mines to be assessed and taxed at not less than $500, except that no such tax would be collected when $100 in labor was actually performed on the patented mine during the year. When collected, this real property tax on patented mines was imposed

in addition to the taxes collected on the proceeds of the patented mines. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178 (1912) (interpreting the 1906 amendment). Specifically, the 1906 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500) except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds*[.]

Nev. Const. art. 10, § 1 (1906) (emphasis added).

In 1989, the voters ratified an amendment which repealed the prior 1902 and 1906 amendments and which amended Article 10, Section 1(1) into its current form. The 1989 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.*

Nev. Const. art. 10, § 1(1) (emphasis added).

In addition to revising Article 10, Section 1(1), the 1989 amendment added a new Section 5 to Article 10 to govern the taxation of mines and mining claims, as follows:

> 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.
> 2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.
> 3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any

> mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Nev. Const. art. 10, § 5. With this background in mind, we turn now to answering your specific questions.

DISCUSSION

I. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?

Under Article 10, Section 1(1), the Legislature "shall provide by law for *a uniform and equal rate of assessment and taxation*, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory," except for property that is exempted from the property tax under the authority of the Nevada Constitution. Nev. Const. art. 10, § 1(1) (emphasis added). The Nevada Supreme Court has described the purpose of the Uniform and Equal Clause in Article 10, Section 1(1) as follows:

> [T]he constitutional convention, in using the language last quoted, meant to provide for at least one thing in regard to taxation: that is, that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property. If the language we have quoted did not express this idea, then it was perfectly meaningless.

State v. Eastabrook, 3 Nev. 173, 177 (1867); United States v. State ex rel. Beko, 88 Nev. 76, 86-87 (1972); List v. Whisler, 99 Nev. 133, 138 (1983).

Because the Uniform and Equal Clause in Article 10, Section 1(1) was used by the framers in connection with the taxation of "property," the Nevada Supreme Court has interpreted the Uniform and Equal Clause as a limitation only on the *ad valorem* property tax, and the court has consistently held that the provision does not limit the Legislature's power to impose other types of taxes on businesses, trades or professions. Ex parte Robinson, 12 Nev. 263, 267-70 (1877); Ex parte Cohn, 13 Nev. 424, 426-27 (1878); In re Dixon, 43 Nev. 196, 204-05 (1919); see also Harris v. City of Reno, 81 Nev. 256, 260 (1965). Thus, to the extent that Article 10, Section 1(1) requires "a uniform and equal rate of assessment and taxation," that provision applies only to Nevada's property tax. It does not apply to other types of taxes, such as excise taxes, privilege taxes or taxes on mineral production. See 5 American Law of Mining §§ 191.03[1][a] & 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005 &

2010) (explaining the differences between property taxes and taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes).

Because Article 10, Section 1(1) requires the property tax to be imposed on "all property, real, personal and possessory," the Legislature cannot exempt any property from the property tax unless the exemption is authorized by the Nevada Constitution. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Thus, in the absence of an exemption from the property tax authorized by the Nevada Constitution, all real, personal and possessory property must be assessed and taxed at a uniform rate.[2] Eastabrook, 3 Nev. at 177-78; Beko, 88 Nev. at 86-87; Whisler, 99 Nev. at 138.

To implement Nevada's property tax in accordance with Article 10, Section 1(1), the Legislature enacted NRS Chapter 361, which provides that all property of every kind and nature is subject to the property tax unless the property is exempted by law. NRS 361.045; State v. Wells, Fargo & Co., 38 Nev. 505, 529 (1915) ("the constitution authorizes and the statute directs that all property of every kind, character, and nature not specifically exempted, is subject to taxation."). The provisions of NRS Chapter 361 are carried out by various state and local tax officials who determine the value of the property being taxed and collect the property taxes imposed for state and local purposes.

To determine the value of the property being taxed, the tax officials first ascertain the taxable value of the property, which must not exceed its full cash value. NRS 361.227. The tax officials then assess the property at 35 percent of its taxable value to arrive at its assessed value. NRS 361.225. To calculate the total amount of property tax that is due, the tax officials apply the state and local property tax rates to the assessed value of the property. NRS 361.445 to 361.470, inclusive.

Under both the Nevada Constitution and NRS Chapter 361, there are limitations on the total property tax levy that may be made for all public purposes. The Nevada Constitution provides that the total property tax levy that may be made for all public purposes must not exceed $5.00 on each $100 of assessed valuation. Nev. Const. art. 10, § 2. The Legislature has enacted a more stringent limitation in NRS Chapter 361, which provides that the total property tax levy that may be made for all public purposes must not exceed $3.64 on each $100 of assessed valuation. NRS 361.453. However, the Legislature has provided for certain

[2] Even though Article 10, Section 1(1) requires that all property must be taxed at a uniform rate, it does not prohibit the Legislature from delegating to each local taxing district the power to fix the rate of taxation for local purposes. State ex rel. Williams v. Fogus, 19 Nev. 247, 249-50 (1885). Therefore, although all property must be taxed at a uniform rate within each local taxing district, "the rate is fixed in each [local taxing district] without reference to the rate established in others." Id. at 250.

exceptions from the statutory limitation in special or emergency circumstances. See, e.g., NRS 354.705, 354.723 & 450.760; 2001 Nev. Stat., 17th Spec. Sess., ch. 6, § 6, at 109.

Early in this State's history, the Nevada Supreme Court held that the net proceeds of extracted minerals are a type of personal property that must be assessed and taxed at the same rate or percentage as other taxable property. City of Virginia v. Chollar-Potosi Gold & Silver Mining Co., 2 Nev. 86, 91-92 (1866); Eastabrook, 3 Nev. at 177-81. Therefore, without the exemption authorized by the Nevada Constitution, the net proceeds of extracted minerals would be assessed and taxed as personal property at the same rate or percentage as other taxable property under NRS Chapter 361.

As discussed previously, the existing provisions of Article 10, Section 1(1) exempt mines and mining claims from the property tax and further provide that mines and mining claims must be assessed and taxed only as provided in Article 10, Section 5. Under Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost.

In accordance with Article 10, Section 5, the Legislature enacted the current provisions of NRS Chapter 362, which impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds. NRS 362.140. Generally speaking, NRS Chapter 362 establishes a graduated tax rate, with a minimum rate of 2 percent and a maximum rate of 5 percent, where "the rate of tax upon the net proceeds of each geographically separate extractive operation depends upon the ratio of the net proceeds to the gross proceeds of that operation as a whole." NRS 362.140.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1), and it will repeal the provisions governing the tax upon the net proceeds of minerals extracted set forth in Article 10, Section 5. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the existing statutory provisions governing the tax upon net proceeds.

In addressing this legal issue, we are guided by several "well-established precepts of statutory and constitutional construction." We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008). As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).

Because "[i]mplied repeals of statutes by later constitutional provisions are not favored," every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments. 16 Am. Jur. 2d Constitutional Law § 51 (2009); Henslee v. Madison Guar. Sav. & Loan, 760 S.W.2d 842, 846 (Ark. 1988) ("a basic and fundamental rule when considering the effect of both statutes and constitutional amendments is that repeal by implication is not favored."). Thus, in determining whether a later constitutional amendment repeals existing statutes by implication, courts will indulge every possible presumption in favor of the constitutionality of the statutes, and courts will construe the statutes in a manner that renders them valid and enforceable if there is any reasonable basis for doing so. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009); Kneip v. Herseth, 214 N.W.2d 93, 101 (S.D. 1974); Cass v. Dillon, 2 Ohio St. 607, 610-11 (1853).

To this end, courts will make every effort to construe existing statutes as if they were amended to conform with a new constitutional provision, rather than construing them as being repealed by implication. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009). Accordingly, "[w]herever such a construction is possible, a new constitutional amendment must be held to amend existing statutory law to agree with such amendment, and those parts of a statute which do not conflict with a constitutional provision retain their validity." Id. at § 50; DeKalb County v. Allstate Beer, Inc., 192 S.E.2d 342, 346 (Ga. 1972) ("an amendment of the constitution must be held to amend the existing statute law to agree with such an amendment.").

To determine whether an existing statute is repealed by implication by a new constitutional provision, courts ask whether "the Legislature under the new constitutional provision could validly have enacted the same statute." State ex rel. Agnew v. Schneider, 253 N.W.2d 184, 196 (N.D. 1977). If the Legislature could have validly enacted the same statute under the new constitutional provision, the existing statute is valid and enforceable, even though the Legislature may have originally enacted the existing statute under a different constitutional provision. Id. at 195-96. In other words, if an existing statute "is sufficiently consistent with the new Constitution to have been capable of passage after the new Constitution took effect . . . the statute cannot be said to have been repealed by implication." State ex rel. Stokes v. Probate Ct., 246 N.E.2d 607, 611-12 (Ohio Ct. App. 1969).

When these rules are applied to the constitutional amendments proposed by S.J.R. 15, we believe that the existing statutes governing the net proceeds tax will not be repealed by implication if S.J.R. 15 becomes effective because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

S.J.R. 15 will repeal the property tax exemption in Article 10, Section 1(1) for mines and mining claims. However, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing property tax exemption for net proceeds of minerals extracted. Under Article 10, Section 1(6), the Legislature is required to exempt business inventories from the property tax. More importantly, Article 10, Section 1(6) also provides that "[t]he Legislature may exempt any other *personal property*, including livestock." Nev. Const. art. 10, § 1(6) (emphasis added).

Because the net proceeds of extracted minerals are personal property, the Legislature would have the authority under Article 10, Section 1(6) to exempt such net proceeds from the property tax even after the repeal of the property tax exemption for mines and mining claims in Article 10, Section 1(1). And because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as being enacted under the authority of Article 10, Section 1(6) to save them from being repealed by implication. In other words, because the Legislature could have validly enacted the same statutes under the authority of Article 10, Section 1(6), it is the opinion of this office that the existing statutes governing the net proceeds tax will remain valid and enforceable if S.J.R. 15 becomes effective, even though the Legislature may have originally enacted the statutes under the constitutional provisions being repealed by S.J.R. 15.

S.J.R. 15 will also repeal the provisions of Article 10, Section 5 which prohibit the Legislature from imposing additional taxes on minerals or their proceeds. Without the constitutional limitation in Article 10, Section 5, the Legislature would have the authority to impose taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes. 5 American Law of Mining §§ 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010 & 2011). Because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, we believe that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as a valid and enforceable tax on mineral production given that there is a reasonable basis for doing so.

It is well established that "[t]he power to tax all the property and business within this state is an essential attribute of its sovereignty, and there is no restraint upon its exercise when within constitutional limits, except the responsibility of the members of the legislature to their constituents." Ex parte Robinson, 12 Nev. 263, 268-69 (1877). As further explained by the Nevada Supreme Court:

> [T]he legislature is vested with all governmental powers not expressly denied to it by the Constitution of the United States and the Constitution of Nevada. This

> principle was first declared with respect to taxation in Gibson v. Mason, 5 Nev. 283, 292 (1869), and has been reasserted from time to time.

Matthews v. State ex rel. Tax Comm'n, 83 Nev. 266, 268 (1967). Thus, but for the limitations imposed by Article 10, Section 5, the Legislature would have the power to tax all aspects of mineral production.

According to the legislative history of Article 10, Section 5, one of the purposes of the constitutional provision was to ensure that the Legislature did not have the power to impose any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section. Legislative History of S.J.R. 22, 64th Reg. Sess. & 65th Reg. Sess. (Nev. LCB Research Library 1987 & 1989).[3] During the legislative hearings on Article 10, Section 5, it was emphasized that "a severance tax would be prohibited because [it] would be a tax on the mineral." Id. at 309. Thus, as understood by the framers of Article 10, Section 5, the constitutional provision prohibits the Legislature from imposing any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section.

This interpretation of Article 10, Section 5 is consistent with the contemporaneous legislation enacted by the Legislature in 1989 to implement the constitutional provision. Senate Bill No. 61, 1989 Nev. Stat., ch. 25, at 31-52; see Hendel v. Weaver, 77 Nev. 16, 20 (1961) ("contemporaneous legislation may always be considered in force in constitutional interpretation."); Halverson v. Miller, 124 Nev. 484, 489 (2008) ("this court looks to the Legislature's contemporaneous actions in interpreting constitutional language to carry out the intent of the framers of Nevada's Constitution."). In the 1989 legislation, the Legislature enacted a statement of legislative intent in which it declared that "the proposed constitutional limitations upon the taxation of minerals and their proceeds preclude a tax upon . . . *[t]he extraction and ordinary mining processes involved in the extraction of minerals*." 1989 Nev. Stat., ch. 25, § 1, at 31-32 (emphasis added).

If S.J.R. 15 becomes effective, the Nevada Constitution will no longer contain a limitation which restricts the power of the Legislature to impose taxes on mineral production. Without the constitutional limitation in Article 10, Section 5, the Legislature would be restored to its full power to tax all aspects of mineral production, and there would be a reasonable basis for construing the existing statutes governing the net proceeds tax as a valid and enforceable tax on mineral production if such a construction would save the existing statutes from being repealed by implication.

---

[3] Article 10, Section 5 originated in Senate Joint Resolution No. 22 (S.J.R. 22), which was passed by the Legislature in 1987 and 1989 and approved by the voters at a special election held on May 2, 1989.

Generally speaking, a tax on mineral production embraces "all exactions, however denominated, that are imposed on an event or an activity associated with mineral production and that are measured by the value or quantity of the mineral produced. Such levies are frequently called severance or production taxes, but they are also labeled as privilege, license, occupation, conservation, and other measures." 5 American Law of Mining § 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010). Typically, a tax on mineral production has the following characteristics: (1) it is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district; (2) it is administered by the state department of revenue or taxation, instead of being administered by local tax officials; (3) it is collected by the state department of revenue or taxation, usually at monthly or quarterly intervals, instead of being collected by local tax officials annually; and (4) the proceeds of the tax do not necessarily inure to the benefit of the local taxing district where the production activities are conducted. 5 American Law of Mining §§ 191.03[1][a] & 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005, 2010 & 2011).

Based on our examination of Nevada's existing statutes governing the net proceeds tax in NRS Chapter 362, we believe that those existing statutes reasonably can be construed as containing most of the typical characteristics of a tax on mineral production. In particular, Nevada's existing net proceeds tax is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district. NRS 362.140. The tax is administered and collected by the State Department of Taxation, instead of being administered and collected by local tax officials, but the tax is collected annually, rather than monthly or quarterly. NRS 362.100 to 362.240, inclusive. Finally, only a portion of the proceeds of the tax are appropriated to the local taxing district where the production activities are conducted. NRS 362.170. The remainder of the proceeds belong to the State.

Given that the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, it is the opinion of this office that there would be a reasonable basis for construing the existing statutes as a valid and enforceable tax on mineral production after the repeal of Article 10, Section 5. Therefore, it is the opinion of this office that such a reasonable construction would save the existing statutes governing the net proceeds tax from being repealed by implication if S.J.R. 15 becomes effective.

In sum, even though S.J.R. 15 will repeal the provisions of Article 10 concerning the taxation of mines and mining claims, it is the opinion of this office that the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Consequently, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

II. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

A person who acquires rights to an unpatented mine or mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. 1 American Law of Mining § 30.05[6] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); N. Alaska Envtl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007); Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011). Even though an unpatented mine or mining claim is only a possessory interest in the minerals underlying the public land, that possessory interest is a species of real property for the purposes of the property tax. NRS 361.035 & 361.075; Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104, 106-07 (1865).

Under the existing provisions of Article 10, Section 1(1), unpatented mines and mining claims are exempt from the property tax. To implement the constitutional exemption for unpatented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 361.075 which exempts unpatented mines and mining claims from the property tax in NRS Chapter 361.

When a person who has rights to an unpatented mine or mining claim takes the steps necessary to obtain a patent for the mine or mining claim, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. 1 American Law of Mining § 30.06[5] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996). Because patented mines and mining claims consist of an ownership interest in land, they are a species of real property in Nevada for the purposes of the property tax. NRS 361.035 & 362.030.

Under the existing provisions of Article 10, Section 1(1), patented mines and mining claims are exempt from the property tax. However, under the existing provisions of Article 10, Section 5, patented mines and mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines and mining claims are exempt from the property tax in NRS Chapter 361. To implement the constitutional exemption for patented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 362.030 to 362.095,

inclusive, which exempts patented mines and mining claims from the property tax in NRS Chapter 361 upon the recording of an affidavit of labor verifying that the labor requirement has been satisfied.

Thus, both patented and unpatented mines and mining claims are a form of real property in Nevada for the purposes of the property tax. However, based on the existing constitutional provisions in Article 10, patented and unpatented mines and mining claims are entitled to exemptions from the property tax. But if S.J.R. 15 becomes effective, it will repeal the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the corresponding statutory provisions which exempt patented and unpatented mines and mining claims from the property tax.

As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).

Under the Nevada Constitution, the Legislature cannot exempt any property from the property tax unless the exemption is authorized by a specific constitutional provision. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Therefore, if S.J.R. 15 becomes effective and repeals the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims, the corresponding statutory exemptions will be repealed by implication unless there is another specific constitutional provision which would authorize the statutory exemptions and save them from being repealed by implication. As a result, we must examine the Nevada Constitution to determine whether there is such a constitutional provision.

Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we have already concluded that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority

to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Article 10, Section 1(8) authorizes the Legislature to exempt "property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Under most circumstances, patented and unpatented mines and mining claims are not used for municipal, educational, literary, scientific or other charitable purposes. However, because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those patented and unpatented mines and mining claims are used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy" as contemplated by Article 10, Section 1(8). See NRS 362.010(2), 362.100(2)(c) & 362.140(4). Therefore, we believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims that are used for geothermal operations. But outside of this limited context, we do not believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Finally, Article 10, Section 6 prohibits the Legislature from enacting property tax exemptions without making certain findings to support the exemptions. In particular, Article 10, Section 6 provides that:

> 1. *The Legislature shall not enact an exemption from any ad valorem tax on property* or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail *unless the Legislature finds that the exemption:*
>
> (a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and
>
> (b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Nev. Const. art. 10, § 6 (emphasis added).

Based on the plain language of Article 10, Section 6, that section is not an independent source of constitutional authority for the Legislature to enact property tax exemptions. Rather, it establishes procedural limitations which the Legislature must observe when it enacts property tax exemptions that are authorized by other constitutional provisions. Therefore, we

do not believe that Article 10, Section 6 would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Accordingly, based on our examination of the Nevada Constitution, it is the opinion of this office that the existing statutory property tax exemptions for patented and unpatented mines and mining claims will be repealed by implication if S.J.R. 15 becomes effective, except with regard to patented and unpatented mines and mining claims that are used for geothermal operations. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361, unless the patented and unpatented mines and mining claims are used for geothermal operations.

III. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

Since the ratification of the Nevada Constitution in 1864, Article 16, Section 1 has contained provisions which authorize the Legislature to propose any amendment or amendments to the Constitution. Under those provisions, if the proposed amendment or amendments are "*agreed to by a Majority of all the members elected to each of the two houses*, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen." Nev. Const. art. 16, § 1 (emphasis added). If, in the next Legislature, the proposed amendment or amendments are "*agreed to by a majority of all the members elected to each house*, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe." Id. (emphasis added). If the people approve and ratify the proposed amendment or amendments, "such amendment or amendments shall . . . become a part of the Constitution." Id.

Although Article 16, Section 1 authorizes the Legislature to propose constitutional amendments, it does not specify the type of legislative measure that must be used to make such proposals. When a state constitution does not specify the type of legislative measure that must be used to propose constitutional amendments, the general rule is that the legislative body may use a resolution adopted by both Houses to make such proposals. Mason's Manual of Legislative Procedure § 145(2) (2010).

Consistent with this general rule, the Legislature has from its earliest sessions proposed constitutional amendments by the use of resolutions. See Senate Journal, 3rd Sess., at 43, 48

(Nev. 1867); Senate Journal, 4th Sess., at 17, 27 (Nev. 1869). For example in 1871, the Assembly used Assembly Concurrent Resolution No. 110 to propose amending Article 10, Section 1 by striking therefrom the words "except mines and mining claims, the proceeds of which alone shall be taxed." Assembly Journal, 5th Sess., at 94 (Nev. 1871).[4]

Although the Legislature has consistently used resolutions to propose constitutional amendments, it has not consistently used the same term to describe the resolutions. In the legislative sessions before 1919, the Legislature employed multiple terms to describe such resolutions, including "concurrent resolution," "joint resolution," "joint and concurrent resolution," "conjoint resolution" and "proposal to amend the Constitution," and sometimes the Legislature employed several of these terms within the same legislative session.[5] However, beginning with the 1919 legislative session, it appears that the Legislature adopted the practice of using only the term "joint resolution" to describe resolutions proposing constitutional amendments, and it appears that the Legislature has consistently followed that practice for the past 94 years. See, e.g., 1919 Nev. Stat., file nos. 6, 19 & 20, at 478 & 486-87; 2011 Nev. Stat., file no. 44, at 3871-72.

When the Nevada Constitution was ratified in 1864, Article 4, Section 18 provided that "*a majority of all the members elected to each House* shall be necessary to pass every bill or *joint resolution.*" Nev. Const. art. 4, § 18 (1864) (emphasis added). Thus, as originally ratified by the voters, both Article 4, Section 18 and Article 16, Section 1 required the same number of votes to pass legislation or to propose a constitutional amendment—a majority of all the members elected to each House.

In 1994 and 1996, however, the voters approved several amendments to Article 4, Section 18 that were proposed by an initiative petition pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that "an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or *joint resolution* which creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception which provides that "*[a] majority of all of the members elected to each House* may refer any measure which

---

[4] The Assembly Journal from 1871 does not show any further action on Assembly Concurrent Resolution No. 110 after it was introduced and referred to committee.

[5] See, e.g., 1869 Nev. Stat., file nos. 1 & 2, at 307 ("Proposal to Amend the Constitution"); 1877 Nev. Stat., file no. 6, at 213-14 ("Conjoint Resolutions"); 1877 Nev. Stat., file no. 23, at 221 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 6, at 149 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 7, at 149 ("Conjoint Resolution"); 1879 Nev. Stat., file no. 26, at 166 ("Concurrent Resolution"); 1903 Nev. Stat., file no. 13, at 232 ("Joint and Concurrent Resolution"); 1903 Nev. Stat., file no. 23, at 240 ("Concurrent Resolution").

creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Because the two-thirds voting requirement in Article 4, Section 18 refers to "joint resolutions," we must consider two legal issues. First, we must consider whether the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments given that Article 16, Section 1 contains its own specific voting requirement which requires only a majority of all the members elected to each House to propose constitutional amendments. Second, even if the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments, we must consider whether those joint resolutions qualify for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

To date, there are no reported decisions from the Nevada Supreme Court that have addressed these legal issues. In the absence of any controlling decision from the Nevada Supreme Court, we must apply the rules of constitutional construction, and we must consider historical evidence, case law from other jurisdictions and other legal sources for guidance in this area of the law.

In 1798, the United States Supreme Court addressed a similar legal issue in a case where the plaintiffs argued that Congress did not validly propose the Eleventh Amendment to the Federal Constitution. Hollingsworth v. Virginia, 3 U.S. 378 (1798). The plaintiffs argued that when Congress exercised its power to propose the Eleventh Amendment under the Amendments Article of the Federal Constitution, Congress failed to submit the proposed amendment to the President for approval or disapproval under the Legislative Article, which provides that:

> *Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary* (except on a question of Adjournment) *shall be presented to the President of the United States*; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. Const. art. I, § 7 (emphasis added).

The Supreme Court rejected the plaintiffs' argument and held that the Eleventh Amendment was constitutionally adopted. 3 U.S. at 382. Although the Supreme Court did not provide any explanation in its opinion for rejecting the plaintiffs' argument, Justice Chase stated that "[t]here can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381 n.

Following the Hollingsworth decision, many state courts have held that legislative proposals to amend the state constitution "are not the exercise of an ordinary legislative function nor are they subject to the constitutional provisions regulating the introduction and passage of ordinary legislative enactments, although they may be proposed in the form of an ordinary legislative bill or in the form of a Joint Resolution." Collier v. Gray, 157 So. 40, 44 (Fla. 1934).[6] As a general rule, these courts have found that the process of proposing constitutional amendments is a separate and independent function that is unconnected with the process of passing ordinary bills and resolutions. See, e.g., Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896) ("The provision for adopting resolutions proposing amendments is distinct from, and independent of, all provisions which are provided for the government of legislative proceedings."); Commonwealth v. Griest, 46 A. 505, 508 (Pa. 1900) ("the separate and distinctive character of this particular exercise of the power of the two houses is preserved, and is excluded from association with the orders, resolutions and votes, which constitute the ordinary legislation of the legislative body."). As further explained by the Colorado Supreme Court:

> The power of the general assembly to propose amendments to the constitution is not subject to the provisions of article 5 regulating the introduction and passage of ordinary legislative enactments. . . . Section 2 of article 19 prescribes the method of proposing amendments to the constitution, and no other rule is prescribed. It is not, therefore, by the "legislative" article, but by the article entitled "amendments," that the legality of the action of the general assembly in proposing amendments to the constitution is to be tested. Article 19 is *sui generis*; it provides for revising, altering and amending the fundamental law of the state, and is not *in pari materia* with those provisions of article 5 prescribing the method of enacting ordinary statutory laws.

Nesbit v. People, 36 P. 221, 223 (Colo. 1894).

Consequently, under the interpretative rule favored by a majority of state courts that have addressed the issue, "[a] proposal by the legislature of amendments to the constitution is not the exercise of ordinary legislative functions, and is not subject to constitutional

---

[6] Jones v. McDade, 75 So. 988, 991 (Ala. 1917); Mitchell v. Hopper, 241 S.W. 10, 11 (Ark. 1922); Nesbit v. People, 36 P. 221, 223-24 (Colo. 1894); People v. Ramer, 160 P. 1032, 1032-33 (Colo. 1916); Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914); Hays v. Hays, 47 P. 732, 732-33 (Idaho 1897); State ex rel. Morris v. Mason, 9 So. 776, 795-96 (La. 1891); Opinion of Justices, 261 A.2d 53, 57-58 (Me. 1970); Warfield v. Vandiver, 60 A. 538, 538-43 (Md. 1905); Julius v. Callahan, 65 N.W. 267, 267 (Minn. 1895); Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896); In re Senate File 31, 41 N.W. 981, 983-88 (Neb. 1889); State ex rel. Wineman v. Dahl, 68 N.W. 418, 418-20 (N.D. 1896); Commonwealth v. Griest, 46 A. 505, 505-10 (Pa. 1900); Kalber v. Redfearn, 54 S.E.2d 791, 793-98 (S.C. 1949); Moffett v. Traxler, 147 S.E.2d 255, 258-60 (S.C. 1966).

provisions regulating the introduction and passage of ordinary legislative enactments." Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914). Under this interpretative rule, a state legislature is required to comply only with the specific provisions in the Amendments Article that govern the proposal of constitutional amendments, and it is not required to comply with the general provisions in the Legislative Article that govern the passage of legislation.

It should be noted, however, that a small minority of state courts have rejected this interpretative rule. These courts have held that specific constitutional provisions governing the proposal of constitutional amendments must be interpreted and harmonized with general constitutional provisions governing ordinary legislative action. Geringer v. Bebout, 10 P.3d 514, 515-24 (Wyo. 2000); State ex rel. Livingstone v. Murray, 354 P.2d 552, 556-58 (Mont. 1960); Smith v. Lucero, 168 P. 709, 709-13 (N.M. 1917). As explained by the Wyoming Supreme Court:

> [W]e do not find cited cases [from other states] persuasive because the interpretive rule, which led to a result which differs from our result in this case, was based on reading constitutional provisions as sequestered pronouncements. We continue to be persuaded that our rule of reading the Wyoming Constitution as an integrated document composed of separate parts but united together for a more complete, harmonious and coordinated entity is the proper rule of interpretation. . . . In several cases, an appellate court's result was reached by distinguishing "law making" from proposals of constitutional amendments, which were viewed by those courts as not being "law making." We perceive little if any difference between the process employed by the legislature in enacting bills which may become a part of Wyoming Statutes and the process used to propose constitutional amendments. To the extent there is a difference, it is not a meaningful distinction which we need to recognize. In the final analysis, the Legislature is engaged in the process of "law making." We are unable to find anything in the cited decisions, which rely on that line of reasoning, that persuades us to adopt it.

Geringer, 10 P.3d at 523-24.

Because of the split in case law from other jurisdictions, we cannot determine with any reasonable degree of certainty whether the Nevada Supreme Court would follow the interpretative rule favored by the majority or minority view. However, we believe that when either interpretative rule is applied to the provisions of the Nevada Constitution at issue, the end result is the same—joint resolutions proposing constitutional amendments under Article 16, Section 1 do not have to satisfy the two-thirds voting requirement in Article 4, Section 18.

If the Nevada Supreme Court were to follow the interpretative rule favored by the majority view, the Legislature would be required to comply only with the specific majority

voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments. The Legislature would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form."

By contrast, if the Nevada Supreme Court were to follow the interpretative rule favored by the minority view, the provisions of Article 16, Section 1 would have to be interpreted and harmonized with the provisions of Article 4, Section 18. But when those provisions are interpreted and harmonized together in accordance with the rules of constitutional construction, we believe that any joint resolution proposing constitutional amendments qualifies for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

When interpreting the provisions of the Nevada Constitution, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). In applying those rules of construction, the court has indicated that its primary task is to ascertain the intent of the framers and to adopt an interpretation that best captures their objective. Id. As explained by the court, "[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law." State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883). Thus, "[w]hatever meaning ultimately is attributed to a constitutional provision may not violate the spirit of that provision." Miller v. Burk, 124 Nev. 579, 590-91 (2008); Lueck v. Teuton, 125 Nev. 674, 680 (2009).

When two or more constitutional provisions relate to the same subject matter, the court strives to "give effect to all controlling legal provisions *in pari materia*." State of Nev. Employees Ass'n v. Lau, 110 Nev. 715, 718 (1994). In other words, whenever possible, constitutional provisions relating to the same subject matter must be read together and harmonized so that each of the provisions is able to achieve its basic purpose without creating conflicts or producing unintended consequences or unreasonable or absurd results. We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008) ("[W]hen possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results."). To this end, when two or more constitutional provisions apply to a given situation and create an ambiguity, the court will endeavor to reconcile the provisions consistently with what reason and public policy would indicate the framers intended. See Halverson v. Miller, 124 Nev. 484, 489-91 (2008); We the People Nev., 124 Nev. at 883-89. As stated by the court, "[i]f a constitutional provision's language is ambiguous, meaning that it is susceptible to 'two or more reasonable but inconsistent interpretations,' we may look to the provision's history, public policy, and reason to determine what the voters intended." Burk, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)); Lueck, 125 Nev. at 680.

Based on its review of the history of the two-thirds voting requirement, the Nevada Supreme Court has explained the purpose of the requirement as follows:

> The supermajority requirement was intended to make it more difficult for the *Legislature* to pass new taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore new sources of revenue.

Guinn v. Legislature (Guinn II), 119 Nev. 460, 471 (2003) (emphasis added). The court has also noted that the two-thirds voting requirement contains an exception which "permits a majority of the Legislature to refer any proposed new or increased taxes for a vote at the next general election." Id. at 472 n.27.

By requiring the Legislature to act by a two-thirds majority vote to pass revenue-generating measures, the framers of the constitutional provision clearly wanted to restrict the power of the Legislature to enact such measures into law through the ordinary legislative process. Nev. Const. art. 4, § 18(2). However, by also providing that the Legislature could act by a traditional majority vote to refer such measures to the people at the next general election, the framers clearly did not want to restrict the power of the Legislature to refer such measures to the voters for approval or disapproval. Nev. Const. art. 4, § 18(3).

Because the Legislature's power to refer revenue-generating measures to the voters under Article 4, Section 18 is substantially the same as its power to refer constitutional amendments to the voters under Article 16, Section 1, we believe that the two provisions must be interpreted and harmonized together as substantially equivalent provisions. In describing the state legislature's power to propose constitutional amendments to the voters, the Colorado Supreme Court has stated:

> [I]n proposing an amendment to the constitution, the action of the general assembly is initiatory, not final; a change in the fundamental law cannot be fully and finally consummated by legislative power. Before a proposed amendment can become a part of the constitution, it must receive the approval of a majority of the qualified electors of the state voting thereon at the proper general election. When thus approved it becomes valid as part of the constitution by virtue of the sovereign power of the people constitutionally expressed.

Nesbit v. People, 36 P. 221, 224 (Colo. 1894).

We believe that the foregoing description applies equally to the Legislature's power to propose revenue-generating measures to the voters under Article 4, Section 18. When the Legislature proposes such measures, its action is initiatory, not final, and its proposal cannot be fully and finally consummated by legislative power. Instead, the proposal must receive the

approval of the voters, and only then does it become law by virtue of the sovereign power of the people constitutionally expressed.

Thus, the spirit and purpose of the referral provisions in Article 4, Section 18 can be construed consistently and harmoniously with the spirit and purpose of the referral provisions in Article 16, Section 1. Under these equivalent referral provisions, the Legislature is authorized to refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. Consequently, when these equivalent referral provisions are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters.

Even though we have not found a case directly on point, we believe that our conclusion is supported by the reasoning in Lockman v. Secretary of State, 684 A.2d 415, 419 (Me. 1996). In Lockman, the Maine Legislature, by a majority vote, passed a joint resolution which proposed a competing measure to be placed on the general election ballot with an initiative petition pursuant to Article IV, Section 18 of the Maine Constitution. The plaintiffs argued that the joint resolution was invalidly enacted without a two-thirds vote under Article IV, Section 16 of the Maine Constitution. Section 16 provided that no act or joint resolution could take effect until 90 days after the adjournment of the session in which it was passed, unless the Maine Legislature, by a two-thirds vote, directed otherwise. Even though the joint resolution did not comply with the 90-day provision in section 16 because it was passed with only a majority vote, the Maine Supreme Court rejected the plaintiffs' argument and held that "section 16 applies to acts and resolves that have the force of law and *does not apply to the approval of competing measures that will become law only if approved by the voters*." Id. at 419 (emphasis added).

Like the two-thirds voting requirement at issue in Lockman, Nevada's two-thirds voting requirement does not apply to measures that will become effective only if approved by the voters. It follows, therefore, that Nevada's two-thirds voting requirement does not apply to joint resolutions proposing constitutional amendments because such measures become effective only if approved by voters.

In sum, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless

approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

CONCLUSION

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Because Article 10, Section 1(6) authorizes the exemption of personal property from the property tax, and because the net proceeds are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective. Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8),

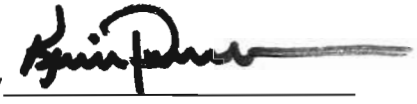
which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Kevin C. Powers
Chief Litigation Counsel

KCP:dtm
Ref No. 130221052939
File No. OP_Roberson130221183853

Date: March 26, 2013

To: Senate Committee on Revenue and Economic Development

From: Joe McCarthy, Comstock Residents Association

Subject: SJR 15 committee hearing

Thank you for allowing me to comment today on the importance of having the 2013 Nevada Legislature once again resoundingly pass SJR 15.

My name is Joe McCarthy, board member of the Comstock Residents Association, current resident of Silver City, a 35-year resident of Nevada. I am the former executive director of the Brewery Arts Center for nearly a decade and Carson City's economic development & redevelopment director for more than a decade. I've been honored to serve our great state throughout my career.

It is essential that we allow Nevadans, via the ballot box, to extract the mining industry from the preferential position of constitutional protection it currently holds. By once again approving SJR 15 and forwarding it on to the voters for their consideration, this legislature will be sending a positive message of wise governance and legislative responsibility. In fact, the message will be profound. It will be a clear, unequivocal statement that says: our elected officials believe in good public policy that levels the playing field for all businesses, large and small. And that you believe in fair, equitable taxation.

A case in point. The environmental degradation and the unraveling of community life currently happening in your Virginia City National Historic Landmark is a perfect example of why the passage of SJR 15 is imperative. The Comstock communities and the historic landmark are currently under threat posed by out-of-state real estate developers and

CPA's acting like miners and wreaking havoc on the land, just 10 miles from where we now sit. Irresponsible mining such as this, seems to come to Nevada, more often than not, when commodity prices start to bubble. These new miners relish entering Nevada's mining business sector in part because they learn early on that mining gets special taxation treatment, not afforded any other industry. No other business is afforded such protection. Why wouldn't these new miners hope to exploit us. It could prove quite profitable for the principals.

What do the residents and small local businesses on the Comstock get for such preferred treatment for these new miners? We get the chemical cocktail of full-scale, open-pit mining within the Virginia City National Historic Landmark, within the Carson River Mercury Superfund site and on top of prosperous residential and small business communities.

Our national landmark received its federal designation from the Secretary of the Department of Interior in 1961, an honor unrivaled in the history of Nevada's historic preservation successes. The landmark has evolved into a tourism powerhouse and a recreational jewel. Its assets include an impressive cultural landscape and the historic towns nestled in a stunning visual setting. Two of our most important, clean and and profitable industries, tourism and recreation, do not receive constitutional protections. But these new miners do, as does the entire Nevada mining industry.

Right now, Comstock Mining, Inc is leveraging your national landmark as an asset to raise Wall Street money and to profit from excavating the Comstock. They are creating a lasting mess, permanently scarring our precious hillsides, valleys, and waterways. All the while, they enjoy unfair constitutional protections. Let's let the voters decide. Vote to approve SJR 15.

NOTICE OF A SPECIAL ELECTION

I, Frankie Sue Del Papa, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that a Special Election will be held on May 2, 1989, and that the following constitutional amendment questions are to appear on the May 2, 1989, Special Election Ballot.

QUESTION NO. 1

Amendment to the Constitution

Senate Joint Resolution No. 22 of the 64th Session

(EXPLANATION - Matter underlined is new; matter in brackets [ ] is material to be omitted.)

SENATE JOINT RESOLUTION - Proposing to amend the Nevada constitution to establish a tax on the net proceeds of minerals extracted at rates separate from the tax on property.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 be amended and a new section be added to article 10 of the constitution of the State of Nevada to read respectively as follows:

Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] only as provided in section 5 of this article.

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

270

6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

QUESTION NO. 1

Shall the Nevada constitution be amended to allow the taxation of minerals at a rate different than other property and to limit other taxes upon minerals and their proceeds?

YES.107,679.....
NO...30,663....

EXPLANATION TO QUESTION NO. 1

The proposed amendment would allow the legislature to tax the net proceeds of mines at a rate different than other property, up to the constitutional limit of 5 percent.

ARGUMENT FOR PASSAGE

This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes.

ARGUMENT AGAINST PASSAGE

There is a perception that the mining industry already pays sufficient taxes.

FISCAL NOTE

Passage of this proposal would have no adverse fiscal impact on state or local governments. It would, however, allow the legislature to increase the tax on net proceeds of mines estimated to generate $52 million in the next two fiscal years as indicated in the Governor's budget.

271

ARTICLE. 10. - Taxation.

Section 1. **Uniform and equal rate of assessment and taxation; valuation of property; exceptions and exemptions; inheritance and personal income taxes prohibited.**

1. The Legislature shall provide by law for a **uniform and equal rate** of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of **all property, real, personal and possessory**, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

2. **Shares of stock, bonds, mortgages, notes,** bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and **shall be exempt**.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. **Personal property** which is moving in interstate commerce through or over the territory of the State of Nevada, or **which was consigned to a warehouse**, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and **shall be exempt from taxation.** Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon **business inventories** by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories **are exempt from taxation.** The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

Sec. 2. **Total tax levy for public purposes limited.** **The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.**

Sec. 3. **Household goods and furniture of single household exempt from taxation.** All household goods and furniture used by a single household and owned by a member of that household are exempt from taxation.

Sec. 3[A]. **Food exempt from taxes on retail sales; exceptions.** The legislature shall provide by law for:

1. The exemption of food for human consumption from any tax upon the sale, storage, use or consumption of tangible personal property; and

2. These commodities to be excluded from any such exemption:

(a) Prepared food intended for immediate consumption.

(b) Alcoholic beverages.

Sec. 4. **Taxation of estates taxed by United States; limitations.** The

legislature may provide by law for the taxation of estates taxed by the United States, but only to the extent of any credit allowed by federal law for the payment of the state tax and only for the purpose of education, to be divided between the common schools and the state university for their support and maintenance. The combined amount of these federal and state taxes may not exceed the estate tax which would be imposed by federal law alone. If another state of the United States imposes and collects death taxes against an estate which is taxable by the State of Nevada under this section, the amount of estate tax to be collected by the State of Nevada must be reduced by the amount of the death taxes collected by the other state. Any lien for the estate tax attaches no sooner than the time when the tax is due and payable, and no restriction on possession or use of a decedent's property may be imposed by law before the time when the tax is due and payable in full under federal law. The State of Nevada shall:

1. Accept the determination by the United States of the amount of the taxable estate without further audit.

2. Accept payment of the tax in installments proportionate to any which may be permitted under federal law.

3. Impose no penalty for such a deferred payment.

4. Not charge interest on a deferred or belated payment at any rate higher than may be provided in similar circumstances by federal law.

Sec. 5. **Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.**

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Sec. 6. **Enactment of exemption from ad valorem tax on property or excise tax on retail sales.**

1. The Legislature shall not enact an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail unless the Legislature finds that the exemption:

(a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

(b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

2. In enacting an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail, the Legislature shall:

(a) Ensure that the requirements for claiming the exemption are as similar as practicable for similar classes of taxpayers; and

(b) Provide a specific date on which the exemption will cease to be effective.

76th (2011) Session
Vote on SJR15 (As Introduced) on Senate Final Passage
May 28, 2011 at 7:54 PM

| 13 Yea | 8 Nay | 0 Excused | 0 Not Voting | 0 Absent |

Shirley Breeden	Yea
Greg Brower	Nay
Barbara Cegavske	Nay
Allison Copening	Yea
Mo Denis	Yea
Don Gustavson	Nay
Elizabeth Halseth	Nay
Joe Hardy	Nay
Steven Horsford	Yea
Ben Kieckhefer	Yea
Ruben Kihuen	Yea
John Lee	Yea
Sheila Leslie	Yea
Mark Manendo	Yea
Mike McGinness	Nay
David Parks	Yea
Dean Rhoads	Nay
Michael Roberson	Yea
Michael Schneider	Yea
James Settelmeyer	Nay
Valerie Wiener	Yea

EXHIBIT J Senate Committee on Revenue and Economic Development
Date:3-26-2013 Page: 1 of 3

76th (2011) Session
Vote on SJR15 (As Introduced) on Assembly Final Passage
June 6, 2011 at 7:27 PM

| 27 Yea | 15 Nay | 0 Excused | 0 Not Voting | 0 Absent |

Paul Aizley	Yea
Elliot Anderson	Yea
Kelvin Atkinson	Yea
Teresa Benitez-Thompson	Yea
David Bobzien	Yea
Steven Brooks	Yea
Irene Bustamante Adams	Yea
Maggie Carlton	Yea
Richard Carrillo	Yea
Marcus Conklin	Yea
Richard (Skip) Daly	Yea
Olivia Diaz	Yea
Marilyn Dondero Loop	Yea
John Ellison	Nay
Lucy Flores	Yea
Jason Frierson	Yea
Edwin Goedhart	Nay
Pete Goicoechea	Nay
Tom Grady	Nay
John Hambrick	Nay
Scott Hammond	Nay
Ira Hansen	Nay
Cresent Hardy	Nay
Pat Hickey	Nay
Joseph Hogan	Yea
William Horne	Yea
Marilyn Kirkpatrick	Yea
Randy Kirner	Nay

Kelly Kite	Nay
Pete Livermore	Nay
April Mastroluca	Yea
Richard McArthur	Nay
Harvey Munford	Yea
Dina Neal	Yea
John Oceguera	Yea
James Ohrenschall	Yea
Peggy Pierce	Yea
Tick Segerblom	Yea
Mark Sherwood	Yea
Debbie Smith	Yea
Lynn Stewart	Nay
Melissa Woodbury	Nay

Session Info | NELIS | Interim Info | Law Library | General Info | Counsel Bureau | Research Library | Assembly | Senate | FAQs
View Scheduled Meetings | Publications | Proposals | Career Opportunities | Gift Shop | Site Map | Contact Us

NOTICE OF A SPECIAL ELECTION

I, Frankie Sue Del Papa, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that a Special Election will be held on May 2, 1989, and that the following constitutional amendment questions are to appear on the May 2, 1989, Special Election Ballot.

QUESTION NO. 1

Amendment to the Constitution

Senate Joint Resolution No. 22 of the 64th Session

(EXPLANATION - Matter underlined is new; matter in brackets [ ] is material to be omitted.)

SENATE JOINT RESOLUTION - Proposing to amend the Nevada constitution to establish a tax on the net proceeds of minerals extracted at rates separate from the tax on property.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 be amended and a new section be added to article 10 of the constitution of the State of Nevada to read respectively as follows:

Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] only as provided in section 5 of this article.

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

EXHIBIT K Senate Committee on Revenue and Economic Development
Date: 3-26-2013 Page: 1 of 2

6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

QUESTION NO. 1

Shall the Nevada constitution be amended to allow the taxation of minerals at a rate different than other property and to limit other taxes upon minerals and their proceeds?

YES.107,679.....
NO...39,443....

EXPLANATION TO QUESTION NO. 1

The proposed amendment would allow the legislature to tax the net proceeds of mines at a rate different than other property, up to the constitutional limit of 5 percent.

ARGUMENT FOR PASSAGE

This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes.

ARGUMENT AGAINST PASSAGE

There is a perception that the mining industry already pays sufficient taxes.

FISCAL NOTE

Passage of this proposal would have no adverse fiscal impact on state or local governments. It would, however, allow the legislature to increase the tax on net proceeds of mines estimated to generate $52 million in the next two fiscal years as indicated in the Governor's budget.

271

SENATE JOINT RESOLUTION NO. 15–COMMITTEE ON REVENUE

MARCH 28, 2011

Referred to Committee on Revenue

SUMMARY—Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to repeal the provision establishing a separate tax rate and providing for assessing and disbursing the tax on the net proceeds of mines.

Legislative Counsel's Digest:

Section 5 of Article 10 of the Nevada Constitution provides for a tax upon the net proceeds of mines which is separate from the tax imposed on all other property. This resolution proposes to repeal the constitutional provision establishing a separate tax on the net proceeds of mines.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 10 of the Nevada Constitution be amended to read as follows:

Section 1. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory . [~~, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.~~]

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in

property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the

income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

And be it further

RESOLVED, That Section 5 of Article 10 of the Nevada Constitution is hereby repealed.

TEXT OF REPEALED SECTION

Sec. 5. Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

(30)

L-3

ARTICLE. 10. - Taxation.

Section 1. **Uniform and equal rate of assessment and taxation; valuation of property; exceptions and exemptions; inheritance and personal income taxes prohibited.**

1. The Legislature shall provide by law for a **uniform and equal rate** of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of **all property, real, personal and possessory**, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

2. **Shares of stock, bonds, mortgages, notes,** bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and **shall be exempt**.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. **Personal property** which is moving in interstate commerce through or over the territory of the State of Nevada, or **which was consigned to a warehouse**, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and **shall be exempt from taxation.** Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax

required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon **business inventories** by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories **are exempt from taxation.** The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

Sec. 2. **Total tax levy for public purposes limited.** **The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.**

Sec. 3. **Household goods and furniture of single household exempt from taxation.** All household goods and furniture used by a single household and owned by a member of that household are exempt from taxation.

Sec. 3[A]. **Food exempt from taxes on retail sales; exceptions.** The legislature shall provide by law for:

1. The exemption of food for human consumption from any tax upon the sale, storage, use or consumption of tangible personal property; and

2. These commodities to be excluded from any such exemption:

(a) Prepared food intended for immediate consumption.

(b) Alcoholic beverages.

Sec. 4. **Taxation of estates taxed by United States; limitations.** The

legislature may provide by law for the taxation of estates taxed by the United States, but only to the extent of any credit allowed by federal law for the payment of the state tax and only for the purpose of education, to be divided between the common schools and the state university for their support and maintenance. The combined amount of these federal and state taxes may not exceed the estate tax which would be imposed by federal law alone. If another state of the United States imposes and collects death taxes against an estate which is taxable by the State of Nevada under this section, the amount of estate tax to be collected by the State of Nevada must be reduced by the amount of the death taxes collected by the other state. Any lien for the estate tax attaches no sooner than the time when the tax is due and payable, and no restriction on possession or use of a decedent's property may be imposed by law before the time when the tax is due and payable in full under federal law. The State of Nevada shall:

1. Accept the determination by the United States of the amount of the taxable estate without further audit.

2. Accept payment of the tax in installments proportionate to any which may be permitted under federal law.

3. Impose no penalty for such a deferred payment.

4. Not charge interest on a deferred or belated payment at any rate higher than may be provided in similar circumstances by federal law.

Sec. 5. **Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.**

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Sec. 6. **Enactment of exemption from ad valorem tax on property or**

excise tax on retail sales.

1. The Legislature shall not enact an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail unless the Legislature finds that the exemption:

(a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

(b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

2. In enacting an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail, the Legislature shall:

(a) Ensure that the requirements for claiming the exemption are as similar as practicable for similar classes of taxpayers; and

(b) Provide a specific date on which the exemption will cease to be effective.

List v. Whisler, 99 Nev. 133 at 140 (1983)

". . . the constitutional prohibition, as delineated in Estabrook, that one species of taxable property not pay higher taxes than other kinds of property."

C

Supreme Court of Nevada.
Governor Robert **LIST**; Nevada Tax Commission, Roy E. Nickson, Executive Director of the Department of Taxation, State of Nevada and Legislative Commission of the State of Nevada, Appellants,
v.
T.L. **WHISLER**, Maj. USMC, Retired, et al., Respondents.

No. 14440.
March 4, 1983.
Rehearing Denied June 10, 1983.

Taxpayers' suit was filed challenging certain 1981 amendments to tax statutes as violative of state and federal Constitutions. The Eighth Judicial District Court, Clark County, Howard W. Babcock, J., held that statutes violated state Constitution, and appeal was taken. The Supreme Court, Gunderson, J., held that since legislation neither applied separate tax rates to different classes nor partially exempted a particular class of property from legitimate burdens of taxation, it did not violate the uniform and equal clause of state Constitution but, rather, it provided a limited adjustment mechanism, by which prior inequitable valuations could be melded into hopefully more uniform valuation and assessment procedures established under the 1981 tax package.

Reversed.

West Headnotes

[1] Statutes 361 1523

361 Statutes
361VIII Validity
361k1522 Presumptions and Construction as to Validity
361k1523 k. In general. Most Cited Cases
(Formerly 361k61, 92k48(1))

All acts passed by legislature are presumed to be valid until the contrary is clearly established.

[2] Constitutional Law 92 990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k996 k. Clearly, positively, or unmistakably unconstitutional. Most Cited Cases
(Formerly 92k48(1))

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.

[3] Constitutional Law 92 990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to

Constitutionality
92k996 k. Clearly, positively, or unmistakably unconstitutional. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚿1030

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1030 k. In general. Most Cited Cases
(Formerly 92k48(1))

Presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.

[4] Statutes 361 ⚿1065

361 Statutes
361III Construction
361III(A) In General
361k1065 k. Rules, principles, maxims, and canons of construction in general. Most Cited Cases
(Formerly 361k214)

If possible, legislative intent should be determined by looking at the act itself.

[5] Taxation 371 ⚿2135

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2134 Classification of Subjects, and Uniformity as to Subjects of Same Class
371k2135 k. In general. Most Cited Cases
(Formerly 371k42(1))

Expressed intent of legislature in enacting taxation statute was not either to favor a particular class of property or to exempt a particular class of property partially from the legitimate burdens of taxation but, rather, the legislature intended to correct a method of assessment and taxation which it perceived to be unjust and potentially unconstitutional. St.1975, c. 427, § 31.

[6] Taxation 371 ⚿2135

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2134 Classification of Subjects, and Uniformity as to Subjects of Same Class
371k2135 k. In general. Most Cited Cases
(Formerly 371k42(1))

Since tax statute neither applied separate tax rates to different classes nor partially exempted a particular class of property from legitimate burdens of taxation, it did not violate uniform and equal clause of Constitution but, rather, statute provided a limited adjustment mechanism, by which prior inequitable valuations could be melded into hopefully more uniform valuation and assessment procedures established under 1981 tax package. St.1981, c. 427, § 31; Const. Art. 10, § 1.

***134 **104** D. Brian McKay, Atty. Gen., Frank Daykin, Legislative Counsel, Carson City, for appellants.

Robert J. Miller, Dist. Atty., William P. Curran, County Counsel and James M. Bartley, Chief Civil Deputy Dist. Atty., John P. Foley, Las Vegas, for respondents.

OPINION

GUNDERSON, Justice:

This appeal arises out of a taxpayers' suit challenging certain 1981 amendments to Nevada tax statutes as violative of the ***135** Nevada and United States Constitutions. In our view, such challenge lacks merit. The relevant background follows.

**105 In 1981, the Nevada Legislature undertook a comprehensive revision of the state's tax structure. The primary components of this effort were contained in Assembly Bill 369, Chapter 149, 1981 Statutes of Nevada 285; Senate Bill 69, Chapter 427, 1981 Statutes of Nevada 786; and Senate Bill 411, Chapter 150, 1981 Statutes of Nevada 305.[FN1] These three pieces of legislation, constituting the 1981 "tax package," were intended, *inter alia*, to provide property tax relief to homeowners by limiting the revenues which local government might generate through property taxes. Increases in the state retail sales tax were expected to offset any loss of revenues occa-

sioned by the limitation on property taxes.

> FN1. Hereinafter, this legislation will be referred to respectively as A.B. 369, S.B. 69 and S.B. 411.

As part of the 1981 tax package, the Legislature undertook to revise the statutory method theretofore utilized in the valuation of property. Under the statutory procedure previously established, assessment was based on the "full cash value" of property. *See* 1977 Nev.Stat. 1318 (NRS 361.227). This "full cash value" had in turn been determined by resort to a series of considerations, which were given such weight as the assessor deemed appropriate. These considerations included the value of the vacant land plus the cost of improvements minus any depreciation, the market value of the property as evidenced by certain other considerations, and the value of the property estimated by capitalization of the fair economic income expectancy. As a practical matter, however, the exigencies of assessment resulted in residential property usually being appraised on the basis of its market value as determined on the basis of comparable sales. In contrast, commercial and other property was usually appraised on the basis of cost less depreciation, or on its production of income.

It seems the Legislature, having determined that existing methods of assessment and valuation had occasioned an inequitable disparity in the tax burdens imposed on property, decided as part of the 1981 tax package to replace the existing valuation system with a system based largely on the costs of improvements less applicable depreciation. *See* NRS 361.227 (effective July 1, 1983). The Legislature apparently concluded that the use of this new method of valuation would help eliminate many of the inequities generated under the old system.

There remained the problem, however, of adjusting current assessed valuations to conform to the valuations which would go into effect under the new system. Property in Nevada must ***136** be physically reappraised at least once every five years; in order to make most effective use of money and manpower, many assessors in Nevada utilize a "cyclical" or continuous reappraisal scheme whereby approximately one-fifth of a jurisdiction's taxable property is reappraised each year. *See* NRS 361.260; *Recanzone v. Nevada Tax Commission*, 92 Nev. 302, 550 P.2d 401 (1976). Due to the widespread use of cyclical reappraisals, when the Legislature amended the valuation system in 1981 a significant percentage of property in Nevada was being taxed on the basis of valuations made as early as 1976. Further, under the cyclical reappraisal system, property valued under the prior system would not be reappraised until it came up for the routine five-year reappraisal. This meant that property last appraised in 1981 would not come under the new system until its reappraisal in 1986.

In order to avoid a perceived injustice which would result if some property owners were forced to pay inequitable taxes for the five-year period required for the normal cyclical reappraisal, the 1981 tax package contained a mechanism for adjusting valuations appraised under the prior system. This "factoring system;" contained in Section 31 of S.B. 69, provided:

> Sec. 31. 1. Notwithstanding the provisions of NRS 361.225, except as provided in section 32 of this act, all property subject to taxation must be assessed at 35 percent of its adjusted cash value. The adjusted cash value is calculated by multiplying the full cash value of the property by the factor shown in the following table for the class and for the fiscal year ****106** in which the property was most recently appraised:

Year of Appraisal	Factor for Residential Improvements	Factor for Other Property
1976-1977 or earlier	1.416	1.438
1977-1978	1.190	1.313
1978-1979	1.000	1.199
1979-1980	0.840	1.095
1980-1981	0.706	1.000

2. The assessment provided in subsection 1 must be

used only for the levying of taxes to be collected during the fiscal year 1981–1982 on all property to which they apply.

3. As used in this section, "residential improvement" means a single-family dwelling, a townhouse or a condominium, and its appurtenances.

As delineated in Section 31, property is to be assessed at 35 percent of its "adjusted *137 cash value." In turn, this "adjusted cash value" is to be calculated by multiplying the "full cash value" of the property in question by a "factor" established by the Legislature. As conceived by the Legislature, it seems these factors are weighted so that the valuations of property made earlier in the reappraisal cycle will be adjusted to bring them into parity with the valuation of property assessed more recently. The value given the factor applicable to any given year evidently reflects the Legislature's considered analysis of the economic dislocations and disparate valuations which had occurred during the early part of the current assessment cycle.

There are, however, two separate sets of weighted factors: one set for residential improvements, and a second set for other property. Further, it is clear that for any given year of appraisal the factors to be applied to residential improvements are less than the factors applicable to other property. It necessarily follows that for any given year of appraisal, residential improvements of a given "full cash value" will have a lower "adjusted cash value," and be subject to less tax liability, than other property of the same "full cash value."

It is this differentiation in the factoring system which is at issue in the instant appeal. Respondent taxpayers sought declaratory relief alleging, *inter alia*, that Section 31 violated the "uniform and equal" rate of assessment and taxation mandated by Article 10, Section 1 of the Nevada Constitution. After a trial, during which considerable testimony was adduced as to the Legislature's intent in enacting the tax package, and concerning the projected effects of the legislation, the district court determined that Section 31 violated Article 10, Section 1.[FN2] In so doing, we have concluded, the court erred.

FN2. The district court also determined that the unconstitutional provisions of Section 31 could not be severed from the remainder of the 1981 tax package, and that therefore the entire tax package must be stricken as unconstitutional. Upon motion of appellants, the judgment of the court was stayed pending this appeal.

[1][2][3] Our analysis of Section 31 begins with the presumption of constitutional validity which clothes statutes enacted by the Legislature. *Viale v. Foley*, 76 Nev. 149, 152, 350 P.2d 721 (1960). All acts passed by the Legislature are presumed to be valid until the contrary is clearly established. *Hurd v. Depaoli et al.*, 56 Nev. 19, 26, 41 P.2d 1054 (1935). 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. *City of Reno v. County of Washoe*, 94 Nev. 327, 333–334, 580 P.2d 460 (1978); *Mengelkamp v. List*, 88 Nev. 542, 545, 501 P.2d 1032 (1972); *State of *138 Nevada v. Irwin*, 5 Nev. 111 (1869). Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional. *Ottenheimer v. Real Estate Division*, 97 Nev. 314, 315–316, 629 P.2d 1203 (1981); *Damus v. County of Clark*, 93 Nev. 512, 516, 569 P.2d 933 (1977); *Koscot Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530 P.2d 108 (1974).

The district court concluded the factoring system set forth in Section 31 violated Article 10, Section 1 of the Nevada Constitution. Article 10, Section 1 provides in pertinent**107 part: "The legislature shall provide by law for *a uniform and equal rate of assessment and taxation*, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory ...." (Emphasis added.) The import of this Uniform and Equal Clause has been discussed several times by this court. In the seminal case of *State of Nevada v. Eastabrook*, 3 Nev. 173 (1867), we analyzed Article 10, Section 1 and held:

> We have no hesitation in saying that the constitutional convention, in using the language last quoted, meant to provide for at least one thing in regard to taxation: that is, that all *ad valorem* taxes should be of a uniform rate or percentage. *That one species of taxable property should not pay a higher rate of taxes than other kinds of property.* If the language we have quoted did not express this idea, then it was perfectly meaningless.

3 Nev. at 177 (emphasis added). The interpretation of the Uniform and Equal Clause established in *Eastabrook* has been approved by this court many times. *See United States v. State ex rel. Beko*, 88 Nev. 76, 86–87,

493 P.2d 1324 (1972); *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 166, 390 P.2d 225 (1964); *State of Nevada v. Kruttschnitt*, 4 Nev. 178, 200 (1868). Further, other jurisdictions having occasion to address virtually identical constitutional provisions have reached similar results. *See State ex rel. Stephan v. Martin*, 608 P.2d 880, 886 (Kan.1980); *Wheeler v. Weightman*, 96 Kan. 50, 149 P. 977 (Kan.1915). Thus, faced with the weight of authority interpreting Article 10, Section 1, the question before this court is whether Section 31 requires one species of taxable property to pay a higher rate of taxes than other kinds of property.

[4] In addressing this question, the crucial inquiry is the legislative intent and purpose for enacting Section 31. It is well-established that judicial construction of legislation should be ***139** based on legislative intent, and legislative intent is to be determined by looking at the whole act, its object, scope and intent. If possible, legislative intent should be determined by looking at the act itself. *Escalle v. Mark*, 43 Nev. 172, 176, 183 P. 387 (1919); *State v. Brodigan*, 37 Nev. 245, 256, 141 P. 988 (1914) (Talbot, C.J., concurring); *State v. Hamilton*, 33 Nev. 418, 421–422, 111 P. 1026 (1910); *In re Primary Ballots*, 33 Nev. 125, 135, 126 P. 643 (1910); *State of Nevada v. Toll-Road Co.*, 10 Nev. 155, 160 (1875).

[5] In the instant case, the intent of the Legislature in enacting Section 31 is unequivocally expressed in S.B. 69. Section 33 of S.B. 69 provides:

> Sec. 33. The legislature finds that:
>
> 1. The factors prescribed in section 31 of this act for the respective years of appraisal *have the approximate effect of placing property appraised before the fiscal year 1980–1981 on a parity with property appraised during that fiscal year, and the respective classes of real property separately specified in that section on a parity with one another.*
>
> 2. Such an approximation is necessary in order to permit the orderly collection of taxes ad valorem during the fiscal year 1981–1982.
>
> 3. Each of the classes of property excluded from the operation of section 31 of this act is assessed pursuant to NRS in such a manner that no adjustment is required to place all property within that class on a parity.

(Emphasis added.) Accordingly, it seems the expressed intent of the Legislature in enacting Section 31 was not either to favor a particular class of property or to exempt a particular class of property partially from the legitimate burdens of taxation. Rather, the Legislature intended to correct a method of assessment and taxation which it perceived to be unjust and potentially unconstitutional. As previously noted, legislative hearings and debate on the 1981 tax package established that residential property was then usually appraised on the basis of comparable sales, while commercial property was appraised primarily on the basis of cost less depreciation or on the property's production of income. *See* 1977 Nev.Stat. ****108** 1318 (NRS 361.227). The Legislature came to the conclusion that, due to the economic forces at work over the years, this method of valuation and appraisal had placed an inordinate and undesirable burden on the residential property taxpayer. By the Legislature's own declaration, the factoring system contained in ***140** Section 31 represents an attempt to rectify this situation and to achieve parity in valuation between residential improvements and other property. The question remains, however, whether the factoring system contained in S.B. 69 nonetheless violates the constitutional prohibition, as delineated in *Eastabrook*, that one species of taxable property not pay higher taxes than other kinds of property.

[6] In this regard, we initially note that Section 31 does not expressly impose two different *rates* of taxation. Both residential improvements and other property are to be taxed at the same rate: 35 percent of "adjusted cash value." If the Legislature had flatly mandated that residential property be taxed at a lower rate than other property, and had provided no rationale for such a disparity of treatment, prior case authority might well compel the conclusion that such legislation was unconstitutional. For example, in *Boyne v. State ex rel. Dickerson*, 80 Nev. at 160, 390 P.2d 225, this court examined a statute which permitted the owner of land used exclusively for agricultural purposes to contract with the county assessor for assessment and payment of taxes based on the "full cash value" of the property for agricultural purposes, rather than on its value for other purposes. The avowed purpose of this statute was to shift or defer the burden of increased taxation on agricultural property caused by increased population pressures and the growth of urban areas. Nonetheless, we found the statute unconstitutional, because such a practice gave owners of agricultural property the very type of distinct tax advantage prohibited by Article 10, Section 1. Of like import is *State ex rel. Stephan v. Martin*, 608 P.2d at 880, which involved a flat, across-the-board reduction of 20 percent in the appraised

value of farm machinery and equipment, in order to avoid a "severe economic crisis" confronting farmers and ranchers. This partial exemption was held to violate the Equal and Uniform Clause of the Kansas Constitution. In contrast, on its face, the instant legislation neither applies separate tax rates to different classes nor partially exempts a particular class of property from the legitimate burdens of taxation.

It is true that Section 31 temporarily establishes two separate sets of factors to be used in calculating the "adjusted cash value" on which tax liability is based. Furthermore, for any given year of assessment, the factor for residential improvements is significantly less than the corresponding factor for other property. Finally, as previously noted, for any given year, a residential improvement with a "full cash value" identical to a given piece of non-residential property will thus derive ***141** a lower "adjusted cash value" than the non-residential property, and will therefore obtain a reduced assessment. However, while the district court concluded this procedure resulted in a nonuniform and unequal method of assessment and taxation, we do not agree with this characterization.

To the contrary, given the existing disparities—caused by the prior use of cost minus depreciation or income production valuation for commercial property, as opposed to comparable sales valuation for residential property—it appears to us that the factoring system contained in Section 31 simply reflects the Legislature's considered judgment that residential improvements have been over-valued and commercial property under-valued during recent assessments. The factoring system contained in Section 31 thus appears to represent a mechanism by which previously faulty valuations will be adjusted, to the best of the Legislature's ability, thereby yielding the equal and uniform taxation required by our Constitution.

In reaching this conclusion, we find it significant that S.B. 69 limits the use of the factoring system to the brief transitional period required to "phase out" the valuations made under the prior system and ****109** "phase in" the new valuations made pursuant to the 1981 tax package. Effective July 1, 1983, all property subject to taxation must be assessed at 35 percent of its taxable value. *See* NRS 361.225. Further, effective July 1, 1983, taxable value of property is to be determined under the new method of valuation which emphasizes cost minus depreciation. *See* NRS 361.227. Finally, subsection 2 of Section 31 provides that the assessment made under the factoring system "must be used only for the levying of taxes to be collected during the fiscal year 1981–1982 on all property to which they apply." Thus, it does not appear that Section 31 violates the constitutional prohibition, as delineated in *Eastabrook,* against taxing different species of property at different rates. Instead, it appears that Section 31 provides a limited adjustment mechanism, by which prior inequitable valuations may be melded into the hopefully more uniform valuation and assessment procedures established under the 1981 tax package.

Accordingly, because the factoring system contained in Section 31 of S.B. 69 does not appear to offend the Equal and Uniform Clause contained in Article 10, Section 1 of the Nevada Constitution, we need not consider whether Section 31 would be severable from the remainder of the 1981 tax package. We note, however, that respondents have advanced a number of additional constitutional challenges to the 1981 tax package, contending that even if the district court erred in regard to Section 31, its judgment was nonetheless correct and ***142** should be sustained. *See Hotel Riviera, Inc. v. Torres,* 97 Nev. 399, 632 P.2d 1155 (1981); *Sievers v. County Treas., Douglas Co.,* 96 Nev. 819, 618 P.2d 1221 (1980) (a correct judgment should not be reversed simply because it is based on a wrong reason). We have therefore examined respondents' additional arguments, and have found them to be without merit.

Accordingly, the judgment of the district court is reversed.

MANOUKIAN, C.J., and SPRINGER, MOWBRAY and STEFFEN, JJ., concur.

Nev.,1983.
List v. Whisler
99 Nev. 133, 660 P.2d 104

END OF DOCUMENT

Sun City Summerlin Community Association v. State, 113 Nev. 835 at 841 (1997)

"That one species of taxable property should not pay a higher rate of taxes than other kinds of property."

Supreme Court of Nevada.
SUN CITY SUMMERLIN COMMUNITY ASSOCIATION, A Nevada Non-Profit Corporation, Appellant,
v.
The STATE of Nevada, By and Through its DEPARTMENT OF TAXATION; County of Clark, Nevada; and Mark W. Schofield, Clark County Assessor, Respondents.

No. 26419.
Aug. 28, 1997.

Community association for planned residential community appealed county assessor's tax assessments of association's properties which were used as common areas. County board of equalization upheld assessments and association appealed. State Board of Equalization denied appeal and association petitioned for judicial review. The Eighth Judicial District Court, Clark County, Jeffrey D. Sobel, J., denied petition and association appealed. The Supreme Court held that: (1) property tax statute prohibiting separate taxation or assessment of condominium's or planned community's common elements applied to association's properties; (2) statute was unconstitutional; (3) properties retained some taxable value despite their legal restrictions; (4) taxation of individual units of community and common areas was not double taxation; and (5) assessor was required to consider restrictions on properties.

Reversed and remanded.

West Headnotes

[1] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Property tax statute requiring each unit of condominium or planned community to be separately taxed and prohibiting separate taxation or assessment of common elements for which declarant has reserved no developmental rights if there is any unit's owner other than declarant does not require that all units have owners other than declarant. N.R.S. 116.1105, subd. 2(b).

[2] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Property tax statute which prohibited separate taxation or assessment of condominium's or planned community's common elements for which declarant has reserved no developmental rights applied to common areas in planned residential community, even though declarant intended to add additional land to community and to subdivide that land, where declarant did not reserve developmental rights for existing common areas, but conveyed common areas to community association. N.R.S. 116.1105, subd. 2(b).

[3] Taxation 371 ⚿2126

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2126 k. Mode or Form of Discrimination in General. Most Cited Cases
(Formerly 371k40(6))

Taxation 371 ⚿2461

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2461 k. Statutory Provisions. Most Cited Cases
(Formerly 371k327)

Statute which effectively permitted taxation of common elements in condominiums, in which unit owners hold undivided interests in common elements, but precluded taxation of common elements in planned communities, in which community associations owned common elements, violated constitutional prescription for uniform and equal rate of assessment and taxation of property. Const. Art. 10, § 1; N.R.S. 116.1105, subd. 2(b).

[4] Constitutional Law 92 ⚿990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚿996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k996 k. Clearly, Positively, or Unmistakably Unconstitutional. Most Cited Cases
(Formerly 92k48(1))

Statutes enacted by legislature carry presumption of constitutional validity, and those attacking statute must clearly show that it is unconstitutional.

[5] Taxation 371 ⚿2728

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2724 Weight and Sufficiency of Evidence
371k2728 k. Valuation. Most Cited Cases
(Formerly 371k485(3))

Taxpayer challenging property tax assessment can satisfy burden of showing clear and satisfactory evidence that county assessor's valuation is unjust and inequitable by showing that assessor applied fundamentally wrong principle or refused to exercise his best judgment or that assessment is so excessive as to imply fraud and bad faith. N.R.S. 361.430.

[6] Taxation 371 ⚿2514

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2512 Real Property in General
371k2514 k. Matters Considered and Methods of Valuation in General. Most Cited Cases
(Formerly 371k348(2.1))

Restrictions on use and alienability of land are relevant to valuation of land and in some circumstances may be extreme enough to render land valueless for tax purposes.

[7] Taxation 371 ⚿2521

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2521 k. In General. Most Cited Cases
(Formerly 371k348.1(1))

Assuming that properties owned by community association for planned residential community were required to be run as nonprofit enterprises for sole benefit of community residents for 20 years, properties retained some taxable value, where association

had power to sell properties if majority of its members assented and there was no restriction on properties' use after 20--year period expired.

[8] Taxation 371 ⚷2150

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)5 Double Taxation
371k2150 k. In General. Most Cited Cases
(Formerly 371k47(1))

Taxation of both planned residential community's individual units and golf courses and recreation centers, which were owned by community association for benefit of community, did not constitute unconstitutional double taxation, even though golf courses and recreation centers enhanced value of and increased taxes on individual units.

[9] Taxation 371 ⚷2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Membership in community association for planned residential community and holding of easements for access to and use of common areas of community did not constitute ownership of common areas for taxation purposes. N.R.S. 116.110318, subd. 2.

[10] Taxation 371 ⚷2521

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2521 k. In General. Most Cited Cases
(Formerly 371k348.1(1))

Legal restrictions on properties owned by community association for planned residential community which required properties to be run as nonprofit enterprises for sole benefit of community residents for 20 years were relevant to properties' valuation, and thus, county assessor was required to consider restrictions in making valuations, even though statute did not expressly require that legal restrictions be considered in appraising improved land. N.R.S. 361.227, subd. 1(a)(2).

****235 *835** McDonald, Carano, Wilson, McCune, Bergin, Frankovich & Hicks and Andrew P. Gordon, Las Vegas, for Appellant.

Frankie Sue Del Papa, Attorney General, and Norman J. Azevedo and Harry J. Schlegelmilch, Deputy Attorneys General, Carson City; Stewart L. Bell, District Attorney, Zev E. Kaplan, Deputy District Attorney, Clark County, for Respondents.

Woodburn & Wedge, Las Vegas, for Amicus Curiae The Community Association Institute.

**837 OPINION*

PER CURIAM:

Sun City Summerlin (Sun City) is a master-planned adult residential community in Las Vegas developed by Del Webb Communities, Inc. (Del Webb). Del Webb developed two golf courses and two recreation centers (the properties) as a part of Sun City and conveyed them to appellant Sun City Summerlin Community Association (the Association), a non-profit corporation. The Clark County Assessor's Office (the county assessor) assessed real property taxes totaling $259,648.11 against the properties. The Association appealed the assessments to the Clark County Board of Equalization, which upheld the assessments. The Association appealed the decision to the State Board of Equalization (the State Board), which denied the appeal. The Association then petitioned for judicial review, and the district court denied the petition.

We conclude that NRS 116.1105(2)(b) applies to this case but is unconstitutional insofar as it precludes taxation of common elements in a planned community. We further conclude that restrictions on the use

of the properties are relevant to their valuation and that the county assessor erred in disregarding the restrictions in valuing the properties.

FACTS

The following facts were presented to the State Board. Sun City is a master-planned adult residential community in Las Vegas developed by Del Webb. Del Webb developed two golf courses and two recreation centers as a part of Sun City and conveyed them to the Association. Del Webb recoups the cost of developing these amenities through a higher sale price for homes in Sun City. Owners of residences in Sun City are Class A members of the Association and must pay an annual fee of $320.00 to the Association. Class A members who wish to play golf pay an additional annual fee of $600.00 and a fee of $4.00 per round of golf. Del Webb is a Class B member of the Association. The Association's bylaws provide that its board of directors can sell Association property worth more than a specified value ****236** only with the assent of a majority of its members.

The four properties were conveyed to the Association in 1990 and 1992 and are encumbered with certain use restrictions. All four deeds reserve for Del Webb, for a period of twenty years after conveyance, the right to prior approval of the design of any ***838** improvements to the properties. The golf course properties shall be used only as golf courses for a period of twenty years after conveyance. The Association asserts in its brief to this court that all four properties must be run as non-profit enterprises for the sole benefit of Sun City residents for twenty years. However, in the record before this court, only the deed for one recreation center states all these restrictions. Moreover, Jon Donnell, the treasurer for the Association and a vice president of Del Webb, informed the State Board that the Association supplements its income "by permitting some nonresident golf play [at] about $75 a round." The Association gave evidence that the golf courses, pro shops, grill, snack bar, and recreation centers on the properties operate at an overall loss.

The Association presented evidence that due to the amenities provided by the properties, homes in Sun City sell for higher prices than comparable homes elsewhere without such amenities and that Sun City homes were assessed $11.00 per square foot higher than comparable homes. According to the Association, this additional assessment amounted to $83,259,000.00 for all Sun City homes. The county assessor valued the four properties in question at a total of $21,657,281.00.

Bill Chambers of the county assessor's office stated that in addition to the golf courses and recreation areas, other factors accounted for the higher value of Sun City homes: Sun City is an affluent retirement community which has security, shopping centers, and nearby medical facilities. Chambers said that to help establish the taxable value of Sun City lots, the county assessor's office had compared the cost of Sun City interior lots with those at a development across the street, Belair Estates. He also said that although Sun City homes were production and Belair Estates homes were semi-custom, the quality of construction was similar. According to Chambers, the county assessor had also compared golf course frontage lots at Sun City with those at Canyon Gate development and concluded that the valuation of Sun City was appropriate given these comparisons.

Tim Greene stated for the Association that Sun City had public streets while Canyon Gate was a more exclusive community with security gates, yet comparable Sun City homes were still higher valued. Donnell, Del Webb vice president, stressed that the county assessor compared Sun City production homes with semi-custom and custom homes, not other production housing developments, which Donnell considered to be Sun City's competition.

A member of the State Board asked Chambers, "what if the developer had recorded his maps with an undivided interest in the common areas? How would you handle it then? It would be reflected in the price of the individual home, wouldn't it?" Chambers answered: "Yes, it would be like a condo."

**839 DISCUSSION*

Whether NRS 116.1105(2) applies to this case

NRS 361.420(4)(b) provides that a property owner who has protested his or her property taxes and been denied relief by the State Board may sue in court on the ground that "the property is exempt from taxation under the provisions of the revenue or tax laws of the state." NRS 116.1105(2) provides:

In a condominium or planned community:

(a) If there is any unit's owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit's owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a **237 declarant has reserved no developmental rights.

The Association contends that NRS 116.1105(2)(b) prohibits separate assessment and taxation of the properties. Respondent Department of Taxation (the Department) argues that this statute does not apply to this case.[FN1]

FN1. The Department also contends that even if the statute applies, it simply provides a "billing mechanism" that does not preclude taxing the properties but only requires billing the individual homeowners for the taxes rather than the Association. We reject this contention because we do not see how NRS 116.1105(2)(b) can preclude "separate tax or assessment" against common elements and yet allow billing of unit owners for taxes on the common elements.

[1][2] Del Webb is the declarant here. *See* NRS 116.110335. The Department argues that as long as Del Webb owns any units at Sun City and is a member of the Association, NRS Chapter 116 is inapplicable. By its own language, however, NRS 116.1105(2)(b) applies "[i]f there is *any* unit's owner other than a declarant." (Emphasis added.) It does not require that all units have owners other than a declarant. The Department also asserts that because Del Webb intends to add additional land to Sun City and subdivide it, Del Webb has reserved developmental rights which place Sun City outside the purview of NRS 116.1105(2)(b). *See* NRS 116.11034.[FN2] However, NRS 116.1105(2)(b) provides that "no *840 separate tax or assessment may be rendered against any *common elements for which* a declarant has reserved no developmental rights." (Emphasis added.) Del Webb has not reserved developmental rights for the common elements in question here. It conveyed the properties to the Association and reserved no right to create units within the properties. Even if Del Webb can add land to Sun City and create additional units, these do not constitute developmental rights in the golf courses or recreation centers. Therefore, Del Webb's remaining interests in Sun City do not preclude application of NRS 116.1105(2) to this case.[FN3]

FN2. NRS 116.11034 provides that developmental rights are rights to:

1. Add real estate to a common-interest community;

2. Create units, common elements or limited common elements within a common-interest community;

3. Subdivide units or convert units into common elements; or

4. Withdraw real estate from a common-interest community.

FN3. Even if Del Web held developmental rights in the common elements, the State would then be required to assess taxes against Del Webb, not the Association. NRS 116.1105(3).

Whether NRS 116.1105(2)(b) is constitutional as applied to planned communities

[3] NRS 116.1105(2)(a) contemplates a situation where "each unit that has been created, *together with its interest in the common elements,* constitutes for all purposes a separate parcel of real estate." (Emphasis added.) In such a situation, "each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements." NRS 116.1105(2)(b). However, under the statutory scheme set forth in NRS Chapter 116, units in planned communities, unlike condominiums, include no taxable interest in common elements.

The parties agree that Sun City is a "planned community." *See* NRS 116.110368, 116.110323. Individual Sun City units do not include ownership interests in the golf courses and recreation centers; rather, the Association of Sun City unit owners owns these common elements. NRS 116.1105(2) expressly applies to both condominiums and planned communi-

ties. But these two types of common-interest community, by statutory definition, exhibit distinctly different ownership of common elements. In a condominium, "the undivided interests in the common elements are vested in the units' owners." NRS 116.110325. In a planned community, common elements are real estate, other than a unit, "owned or leased by the association." NRS 116.110318(2). Thus, NRS 116.1105(2)(b) permits taxation of common elements in condominiums, where unit owners hold undivided interests in the elements, but not in planned communities such as Sun City, where associations own the elements, ****238** and the county assessor is precluded from taxing the common elements directly.

[4] The question before us is whether this disparate taxation of ***841** properties is constitutional. Statutes enacted by the Legislature carry a presumption of constitutional validity, and those attacking a statute must clearly show that it is unconstitutional. *List v. Whisler*, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983).

Article ten, section one of the Constitution of the State of Nevada requires the Legislature to "provide by law for a uniform and equal rate of assessment and taxation" and "prescribe such regulations as shall secure a just valuation for taxation of all property." Early in its history, this court explained that this constitutional provision requires "that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property." *State of Nevada v. Eastabrook*, 3 Nev. 173, 177 (1867). The court concluded that a statute providing for a different tax rate for the products of mines was unconstitutional and void: "The legislature could neither make the tax greater nor less on the products of mines than on other property." *Id.* at 179. This court has reaffirmed its holding in *Eastabrook* many times. *See List*, 99 Nev. at 138, 660 P.2d at 107.

In *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 390 P.2d 225 (1964), this court considered a statute which allowed assessment of land used for agricultural purposes based on its value for such use, rather than on its value for other purposes-the method for assessing other lands. This court affirmed the district court's conclusion that the statute was unconstitutional because it gave the owners of agricultural property a distinct tax advantage over other landowners. *Id.* at 166-67, 390 P.2d at 228-29.

Insofar as NRS 116.1105(2)(b) precludes taxation of common elements in planned communities, we conclude that it is void for violating the prescription "for a uniform and equal rate of assessment and taxation" of all property set forth in article ten, section one of our state constitution.

Other issues regarding the assessment and taxation of the properties

The Association offers other reasons, in addition to NRS 116.1105(2)(b), for assessing no taxes against the properties. It argues that the tax assessment was improper because the deed restrictions limit the properties' marketability and largely eliminate their value. It also argues that because the properties enhance the value of and increase the taxes on Sun City units and because unit owners hold easements in the properties, taxation of both the properties and the units amounts to unconstitutional double taxation.

[5] NRS 361.420(4)(e) provides that a person assessed may sue on ***842** the ground that "the assessment is out of proportion to and above the taxable cash value of the property assessed." The plaintiff has the burden of proof "to show by clear and satisfactory evidence that any valuation established by ... the county assessor ... is unjust and inequitable." NRS 361.430. A plaintiff can satisfy this burden by showing that the assessor applied a fundamentally wrong principle or refused to exercise his or her best judgment or that the assessment is so excessive as to imply fraud and bad faith. *Imperial Palace v. State, Dep't Taxation*, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992).

[6][7] Both parties have cited a number of cases regarding the effect of zoning and deed restrictions on the value of land. *See, e.g., Recreation Centers v. Maricopa County*, 162 Ariz. 281, 782 P.2d 1174, 1176 (1989); *Lake County Bd. v. Property Tax Appeal Bd.*, 91 Ill.App.3d 117, 46 Ill.Dec. 451, 414 N.E.2d 173 (1980); *Supervisor of Assessments v. Bay Ridge Prop., Inc.*, 270 Md. 216, 310 A.2d 773 (1973); *Dept. of Revenue v. Grouse Mt. Development*, 218 Mont. 353, 707 P.2d 1113 (1985); *Locke Lake Colony v. Town of Barnstead*, 126 N.H. 136, 489 A.2d 120 (1985); *Grasser v. Graham*, 97 Misc.2d 417, 411 N.Y.S.2d 836 (Sup.Ct.1978); *Brooks Re-*

sources Corp. v. Dept. of Revenue, 286 Or. 499, 595 P.2d 1358 (1979); *Tualatin Development Co. v. Department of Revenue*, 256 Or. 323, 473 P.2d 660 (1970); *Lake Monticello Owners' Ass'n v. Ritter*, 229 Va. 205, 327 S.E.2d 117, 119 (1985); ****239***Sahalee Country Club v. Bd. of Tax App.*, 108 Wash.2d 26, 735 P.2d 1320 (1987); *Twin Lakes Golf and Country Club v. King County*, 87 Wash.2d 1, 548 P.2d 538 (1976). We distill from these cases the proposition that restrictions on the use and alienability of land are relevant to valuation of land and in some circumstances may be extreme enough to render the land valueless for tax purposes. We conclude that the restrictions in the instant case are not that extreme. Even assuming that all four properties must be run as non-profit enterprises for the sole benefit of Sun City residents for twenty years, they appear to retain some taxable value. The Association has the power to sell the properties in question if a majority of its members assent. Someone might be willing to buy the properties since there is no restriction on their use after the twenty-year period expires. Under the approach taken by the Arizona Supreme Court in *Recreation Centers*, even a non-profit restriction on a property's use is irrelevant to its valuation for tax purposes. *Recreation Centers*, 782 P.2d at 1181-83. Furthermore, the Association did not show that the golf courses or other facilities could not be run at a profit in the future. *See Brooks*, 595 P.2d at 1360 (taxpayer failed to show unprofitable golf course had no value when losses were decreasing and taxpayer offered no expert testimony that course would continue to be unprofitable).

[8] ***843** In regard to the issue of double taxation, the correct view is that there is no necessary correlation between one property's increase in value and another property's decrease in value. Homes located near a golf course can enjoy enhanced value from that proximity without impairing the value of the golf course itself. Certainly, a separately owned, for-profit golf course which enhances the value of surrounding homes could not avoid taxes simply because it has increased the value of and the taxes paid on those homes. Therefore, the focus should be simply on the subject property's value, and neighboring property values are relevant only insofar as they affect the subject property's value. *See Sahalee*, 735 P.2d at 1323-24; *Lake County*, 46 Ill.Dec. at 454, 414 N.E.2d at 176; *cf. Lake Monticello*, 327 S.E.2d at 119.

The Association contends that taxation of the properties constitutes double taxation for other reasons. The Association argues that because its members are automatically and mandatorily made members of the Association, and the Association owns the common elements, that such membership constitutes an ownership interest in the common elements. It also claims that Sun City residents have an ownership interest in the properties pursuant to NRS 116.2116(2), which provides that in a planned community,

> the units' owners have an easement:
>
> (a) In the common elements for purposes of access to their units; and
>
> (b) To use the common elements and all real estate that must become common elements ... for all other purposes.

[9] This contention has no merit. The Association offers no authority for the proposition that membership in the Association or easements for access to and use of property constitute ownership of that property, nor does it explain how this proposition is to be reconciled with NRS 116.110318(2), which states that common elements in a planned community are "owned or leased by the association." [FN4]

> FN4. Even if we were to agree that membership in the Association constituted an ownership interest in the common elements, it is clear from the double taxation discussion, *supra*, that such an interest was not taxed through the higher value of the homes.

[10] As discussed above, however, these easements are relevant to accurate valuation of the properties. Although the restrictions imposed on the properties do not render them valueless, the restrictions are relevant to valuation of the properties. The record indicates that the county assessor did not consider the restrictions in making its valuations, and the Department argues that under ***844** NRS 361.227(1)(a)(2) the assessor need not and should not consider such restrictions in valuing improved land. We reject this argument.

NRS 361.227(1)(a)(1) expressly provides that vacant land be appraised by considering *inter alia* "any legal ... restrictions" upon ****240** the land's uses, while NRS 361.227(1)(a)(2) does not expressly provide that legal restrictions be considered in appraising improved land. The Department seems to argue that since subsection (1)(a)(2) does not mention legal restrictions upon use, such restrictions are irrelevant in regard to improved land. This view does not make sense. NRS 361.227(1)(a)(2) provides that improved land be appraised "consistently with the use to which the improvements are being put." We conclude that restrictions on use are an integral aspect of the use to which improved land is put and are necessarily relevant to any valuation of the land. Therefore, we conclude that the county assessor applied a fundamentally wrong principle in disregarding the use restrictions in valuing the properties.

CONCLUSION

NRS 116.1105(2)(b) is unconstitutional and void insofar as it precludes the taxation of common elements in a planned community. Consideration of the restrictions which the properties are subject to is necessary for accurate valuation of the properties. We therefore reverse the district court's order and remand this case to that court for further proceedings consistent with this opinion.[FN5]

FN5. The Honorable A. William Maupin, Justice, did not participate in the decision of this matter.

SHEARING, C.J., SPRINGER, ROSE, and YOUNG, JJ., concur.

Nev.,1997.
Sun City Summerlin Community Ass'n v. State By and Through Dept. of Taxation
113 Nev. 835, 944 P.2d 234

END OF DOCUMENT

Westlaw Delivery Summary Report for WARREN,GORDON H

Date/Time of Request:	Friday, March 22, 2013 14:58 Pacific
Client Identifier:	005004-0015-FPT
Database:	NV-CS
Citation Text:	46 P. 723
Lines:	370
Documents:	1
Images:	0
Recipient(s):	gwarren@fclaw.com

State v. Virginia & T.R. CO., 23 Nev. 283 (1896)

". . . the term 'full cash value' means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor."

N - 18

C

Supreme Court of Nevada.
STATE
v.
VIRGINIA & T. R. CO. et al.

NO. 1,473.
Nov. 17, 1896.

Appeal from district court, Washoe county; A. E. Cheney, Judge.

Action by the state of Nevada against the Virginia & Truckee Railroad Company and others to recover taxes. From a judgment for plaintiff, and from an order refusing a new trial, defendants appeal. Reversed.

Action to recover taxes due for the year 1895, amounting to $5,369.10. The defendant made the statement to the assessor required by the statute, valuing its railroad in Washoe county at $131,800. This the assessor refused to accept, but assessed it at the sum of $254,321. Upon complaint by the defendant to the board of equalization of Washoe county, this assessment was sustained. Upon the taxes becoming due, the defendant tendered, in full payment thereof, $3,173.86, which was refused by the tax collector. To the action, the defendant made answer that the actual cash value of its road in Washoe county was but $131,800. The case was tried before a jury, and a verdict rendered in favor of the state, finding the value of the property to be the same as fixed by the assessor. From the judgment entered upon this verdict, and an order refusing a new trial, the defendant appeals.

West Headnotes

Appeal and Error 30 ⚿1002

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)2 Verdicts
30k1002 k. On Conflicting Evidence. Most Cited Cases

The rule that a verdict on conflicting evidence will not be disturbed relates only to a substantial conflict.

Taxation 371 ⚿2560

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2560 k. Railroads. Most Cited Cases
(Formerly 371k390(2))

Under St. 1891, pp. 137, 138, providing that all property shall be assessed at its actual cash value, and that the term "cash value" means the amount at which the property would be appraised if taken in payment of a just debt from a solvent debtor, the value of a railroad for the purpose of taxation must be determined mainly by its net earnings, capitalized at the current rate of interest, taking into consideration any immediate prospect of an increase or decrease in the earning capacity of the road.

Taxation 371 ⚿2560

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2560 k. Railroads. Most Cited Cases
(Formerly 371k390(2))

In estimating the net earnings of a railroad as a basis for ascertaining the value of the road for the purpose of taxation, the cost of replacing a bridge should be deducted as a part of the expense of that year.

*723 W. E. F. Deal, for appellants.

F. H. Norcross, Dist. Atty., Torreyson & Summerfield, and Robt. M. Beatty, Atty. Gen., for the State.

BIGELOW, C. J. (after stating the facts).

By the act of March 9, 1895 (St. 1895, p. 39), section 52 of the revenue law was amended so as to permit a defendant sued for delinquent taxes to answer "that the assessment is out of proportion to and above the actual cash value of the property assessed." Prior to that amendment this defense could not have been made. State v. Central Pac. R. Co., 21 Nev. 172, 178, 26 Pac. 225, 1109. The defendant answered under this amendment, but the jury found against it; and the question presented upon the appeal is, what was the actual cash value of the defendant's road in Washoe county?

The respondent first contends that the evidence as to value is conflicting, and that, consequently, this court cannot interfere with the verdict. That is undoubtedly the general rule, but for it to have this effect there must be a substantial conflict. It is not sufficient that there is some evidence supporting the verdict, if it is so weak and inconclusive as not to raise a substantial conflict with that produced against it. Hayne, New Trial & App. § 288; Watt v. Railroad Co., 44 Pac. 423, 23 Nev. 154. We think that is the case here. While there is some evidence in support of the verdict, it is so weak, and is so completely upset by the undisputed facts, that it does not raise a substantial conflict as to the true value of the road. Const. Nev. art. 10, provides that all property, both real and personal, shall be assessed and taxed at an equal and uniform rate, and shall receive a just valuation. By St. 1893, p. 110, § 3, it is provided: "In ascertaining, assessing and fixing the value of any railroad for taxation the assessor shall assess it the same as other property, and shall consider, treat and assess the portion thereof at its value within his county as an integral part of a complete, continuous and operated line of railroad, and not as so much land covered by the right of way merely, nor as so many miles of track consisting of iron rails, ties and couplings." By St. 1891, pp. 137, 138, it is directed that all property shall be assessed at its actual cash value, and that the "term §full cash value' means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor." A railroad, then, the same as every other class of property, is to be assessed at its true cash value,-at such an amount as it would be appraised if taken in payment of a just debt due from a solvent debtor. But this does not necessarily mean that the same rules and principles are to be applied to all the different kinds in determining what their true cash value is. The true value of each class is to be determined by evidence applicable to that class. Wherever property has a well-defined market value, which is usually the case with personal property, with town and farm property, the market value is usually the best criterion of its value for purposes of taxation. It is fair *724 to presume that property to be taken in payment of a just debt from a solvent debtor would be appraised at what it is reasonably worth in the market,-at what it would probably bring. So one rule is really the equivalent of the other. But there are many other kinds of property to which this test would be entirely inapplicable. It cannot be said, although sometimes bought and sold, that they have a market value. Such, for instance, is a water ditch, a salt marsh, a borax field, or a mine of any kind. A toll road is another instance. Take, for example, the famous "Geiger Grade," which must have cost many thousands of dollars, and have been, at one time, a wonderfully productive piece of property, but which now would probably not pay the wages of a toll keeper. The market cannot be appealed to fix a value upon such property, but its value may be and must be fixed by other obvious considerations. A railroad comes within this class. Railroads are bought and sold so seldom, and the value of each road depends so entirely upon its surroundings, that in determining the amount at which such property would be appraised if taken in payment of a debt we must resort to other principles. Railroads are usually constructed and operated for profit. They are not valued, as men sometimes value a beautiful home, a horse, or a diamond, for the pleasure that comes from their ownership, but for the returns that can be obtained from them as a business investment. Neither are they usually held for speculative purposes, as much other property, particularly unimproved lands, town and city property, is so often held. The value of a railroad is generally strictly prosaic and utilitarian. To obtain any return from it, either present or prospective, a railroad must be operated. It cannot lie idle, and at the same time increase in value through the natural increase of population and business. As it must be operated, expense must be constantly incurred, and the result is that its true value as a railroad depends very largely-almost entirely-upon what its net income can be expected to be. It is reasonable to suppose that own best advantage, -that they

will obtain all the income possible, and keep the expense of operation as low as possible. This should certainly be the presumption in the absence of a showing to the contrary; and it follows, where a road has been operated for a number of years, that what it has done in the past is a very good criterion of what it may be expected to do, under the same conditions, in the future. Then, after ascertaining this net return, it is necessary to take into consideration the surrounding conditions, which also cut some figure in the problem, such as the condition of the road, in order to determine whether the expense of keeping it in repair will be greater or less than in the past, and the condition of the country tributary to the road, in order to form a judgment of whether its business is likely to increase or decrease, or remain stationary. In fact, the true cash value of the property-its value for taxation-should be determined by the same matters that would be considered by one who wished to purchase and who was simply endeavoring to ascertain what the road was worth.

In the case of State v. Central Pac. R. Co., 10 Nev. 47, this whole matter was very thoroughly considered by as able a bench as it has ever been the good fortune of this state to have. From the opinion by Beatty, J., we make the following short extract: "To determine the value of a railroad, then, the very first inquiry is as to its actual cost. That, prima facie, is its value. But if it appears that the actual cost was in excess of the necessary cost, the necessary cost is its proper standard. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired, by competition or other cause, or, in short, if the utility of the road is not equal to its cost, then its value is less than its cost, and must be determined by reference to its utility alone." It is claimed, however, that what was said in that case as to the correct rule for fixing the valuation of a railroad was dictum. We do not so regard it, as the defense in that case was that the road had been fraudulently overvalued. In considering this defense, the first point to be determined was whether there had been any overvaluation at all. Upon its theory of how a road should be valued, the defendant had established that there had, and this brought the question of what was a correct theory squarely before the court. But no matter. Whether what was there said was necessary to the decision of that case or not, we regard it as a substantially correct statement of the law, and we find it supported by many other cases. Thus, in People v. Keator, 67 How. Prac. 278, the court held as follows: "In complying with this provision of the law, as a railroad property cannot, as a dwelling, have any fancy value, by reason of its location or the expenditure thereon of large sums of money which would conduce to the comfort of the owner, it is evident that the assessors, in fixing its value, must be very largely controlled by its ability to earn money, and the productiveness of its use for the purposes of a railroad. As an original question, it would seem to be reasonably clear that the value of a railroad property must almost entirely depend upon its capacity to earn money for its owners, and that, therefore, no creditor would receive from a solvent debtor, in payment of his debt, railroad property at a greater price than that which would be a fair one based upon its earning capacity." In *725People v. Weaver, 67 How. Prac. 479, a case involving the value of a bridge, the same court said: "In determining the value of the property of the relator in the mode which the statute directs, it is an evidently sound proposition that the true criterion of such value must be its earning capacity." In People v. Hicks, 40 Hun, 601, we find the following, which we adopt as a very careful statement of the law: "The estimate of value of any portion of the road cannot be intelligently made without some knowledge or information of it as a whole, and its business, earnings, and ordinary expenses. Railroads are constructed with a view mainly to revenue and profit upon investments; and hence the productive capacity and its earnings are matters for consideration in the estimate of their value, and the extent to which actual net earnings of a road should governor aid such estimate is dependent upon circumstances. No arbitrary method can be prescribed of ascertaining value. In some cases the earnings of a road may be entitled to much more consideration than in others. The cost of the road is also usually to be taken into account, and the value depends much upon relations present, and in reasonable contemplation, because the value of property may considerably be dependent upon defined unappropriated means and facilities for increased business connections and relations, and the importance of the consequences to follow." To the same effect are Railway Co. v. Guenther, 19 Fed. 395; People v. Pond, 13 Abb. N. C. 1. See, also, People v. Fredericks, 48 Barb. 173; State v. Central Pac. R. Co., 7 Nev. 99. Perhaps, to avoid a misunderstanding of our decision, it should be stated in this connection that the value of a portion of a road is not, necessarily, a fractional part of the whole. Owing to

local considerations, it may be greater or less. But we find nothing in the evidence in this case indicating any difference, and it is only mentioned to avoid a misconception of the opinion.

Without contradiction, the evidence in this case shows the following facts: That the cost of construction of the road was $3,780,452.96, but that it could now be replaced, exclusive of the right of way, for $1,500,000. That for the year ending June 30, 1894, the net earnings were $8,642.52; for the year ending June 30, 1895, $27,449.53; and for the year ending June 30, 1896, of which the last three months were estimated upon the basis of the receipts for the preceding nine months, $21,077.71, from which should be deducted at least $6,898.23, the amount the defendant admitted to be due Storey and Washoe counties for taxes for the year 1895, and possibly more, depending upon the result of this and a similar action in Storey county, leaving net for that year $14,179.50 or less. It is not claimed that these figures are incorrect, nor that the gross receipts of any year might have been increased by proper management, or the amount of expense decreased. It was also shown, without contradiction, that the current rate of interest in Washoe county was 8 per cent. per annul. Whether a broader view should not have been taken upon this point, and the rate of interest fixed at a lower figure, we have no data upon which to form a conclusion. There was no evidence that it was too high, and for the purposes of this appeal it must consequently be accepted as correct. It was also shown, again without contradiction, that there is no prospect in the near future that the business of the road will increase. In fact, it seems quite probable that, if anything, for some time to come, the receipts must decrease. In this connection it is argued that the jury had a right to exercise their own judgment in determining whether there was a probability of future improvement; that they could take judicial notice of the condition of the country, and determine as well as an expert whether business was likely to increase; and that, having done so, their judgment cannot be revised by this court. Admitting, without deciding, that they could take such notice of surrounding conditions, then this court has the same right and the same knowledge that the jury had, and, the same as a finding upon any other point, there must be something substantial upon which to base it. If the jury can take judicial notice of a thing, it must be of something that exists, not of something that does not, and there can be no question that there is nothing now except pure speculation upon which to base such a belief. There are no improvements contemplated and in process of construction, and no new mining camps discovered and developed to such an extent, in the region of country tributary to defendant's road, as make it reasonably certain that they will add materially to the income of the road in the near future. To affect the present value of the road, such prospective improvement must be more than a possibility. It must be so near and so certain that a business man purchasing the road would take it into consideration. People v. Weaver, 67 How. Prac. 477. It is present and not prospective value that is in question. People v. Roberts (Sup.) 38 N. Y. Supp. 724. It is very probable that, in time, new mining discoveries will be made, or present ones further developed, and new enterprises opened up that will bring in an increased population, and add to the business of this road, and we certainly believe such will be the case, and when this happens it will add to its value; but this possibility does not, as a business proposition, add materially to its present value. From the foregoing data, which certainly, in the main, cover the elements to be taken into consideration in determining the value of this road, there can be no question that the portion of the road in Washoe county is not of the true cash value of $254,321, as fixed by the verdict. It does not seem reasonable that the value of a road should be fixed in view of the net receipts for any one year, which, owing to abnormal conditions, ***726** may be greater or less than the average; but we are not called upon to consider that point here. We should certainly not go back beyond the railroad fiscal year of 1893-94, because the evidence shows that the conditions which produced a net profit the year before of $102,341.52 no longer exist; and if we should put the years 1893-94, 1894-95, and 1895-96 together, the average would be less than the receipts of 1894-95. So, considering that year alone, the net receipts were $27,449.53. That sum, capitalized at 8 per cent., represents $343,119.12 as the value of the entire road, not taking into account the rolling stock and other personal property, consisting of 51.75 miles of main track and 26.14 miles of side track, of which amounts there are 25.65 miles of main track and 3.55 miles of side track in Washoe county. Several different ways of figuring Washoe county's proportion of the entire valuation may be adopted, depending upon the view taken of the side track; but under none of them can it amount to near the sum of $254,321, as fixed by the verdict.

46 P. 723
35 L.R.A. 759, 23 Nev. 283, 46 P. 723
(Cite as: 35 L.R.A. 759, 46 P. 723)

In making the above estimate, and in basing it entirely upon the earning capacity of the road, we do not wish to be understood, as we have stated before, as holding that there may not be other considerations which, in some cases, would cut quite a material figure. We simply hold that the earning capacity is the main consideration, and that, as shown in the evidence in this case as reported to us, we discover no others of sufficient importance to affect the result. The only evidence tending to support the verdict is that of the assessor. He testified that in his judgment the road in Washoe county was worth what it was assessed for. It appeared, however, that he had no special knowledge of the value of a railroad, nor was he any better qualified to testify to the value of one than almost any other man in the community. He stated that, in making the assessment, he had taken into consideration the business the road seemed to be doing, certain mining developments which, at the time of the trial, had turned out to be worthless, the material in the road, and its condition; that he did not examine the reports of the road, nor did he make any inquiry to ascertain what business it was or had been doing; that he did not take into consideration any decrease in the earnings of the road, and that, if he had known they had greatly decreased, it would not have made any difference in his judgment of its value; that, in making up his judgment, he didnot take into consideration what the business had been, nor what it might be in the future. In making the assessment, he seems to have looked the property over, and to have come to the general conclusion it was worth the value he placed upon it. This would be all right, so far as the assessment was concerned, if he hit it right, because the law does not require the assessor to act upon any particular kind of evidence; but, when it comes to testifying as an expert, he must be able to give some reason for his conclusions, or they are not entitled to much weight. Certainly he was able to give none here, and we cannot consent to the claim that such evidence creates a substantial conflict with the undisputed facts shown by the defendant.

There is also a question as to whether a part of the cost of a steel bridge across the Truckee river, erected in the year 1894, should be deducted as a part of the expense of that year. As we understand the facts relating to that matter, they are as follows: The old wooden bridge had become decayed to such an extent that it was necessary to replace it with a new one. The cost of a new wooden bridge would be $6,018; of a new steel bridge, $7,812.79. The company concluded to put in a steel bridge, and it now claims that what it would have cost to build a wooden bridge should be deducted as a part of the annual expense of keeping up the road, and that only the difference between the cost of the two should be charged to construction account. We see no reason why this is not correct. Replacing a worn-out bridge would seem to be as much an expense of keeping a road in repair as would replacing old ties, old rails, or old culverts; and in our statement of the net earnings of the road we have accordingly deducted it. As this expense will not have to be incurred again, it is fair to suppose that the future net earnings will be increased by that fact. Judgment and order reversed, and cause remanded for a new trial.

BONNIFIELD and BELKNAP, JJ., concur.

Nev. 1896.
State v. Virginia & T.R. Co.
35 L.R.A. 759, 23 Nev. 283, 46 P. 723

END OF DOCUMENT

Consolidated Coppermines Corp. v. State, 68 Nev. 298 at 301 (1951)

"There is no dispute as to the nature of the tax as provided by our revenue act. It is recognized by all parties that the tax is an ad valorem tax rather than an income tax or occupation license; that the tax is not upon the mine itself nor upon the mining enterprise but is solely upon the proceeds of the mine."

Supreme Court of Nevada.
CONSOLIDATED COPPERMINES CORP.
v.
STATE et al.

No. 3625.
May 11, 1951.

Action by Consolidated Coppermines Corporation, a corporation, against the State of Nevada, the County of White Pine, and the Nevada Tax Commission, to recover taxes paid under protest. The Seventh Judicial District Court, White Pine County, Harry M. Watson, J., dismissed plaintiff's complaint, and plaintiff appealed. The Supreme Court, Merrill, J., held that amount of premium payment made to plaintiff, under government plan for stimulation of copper production in addition to amount received commercially from sale of ore, was paper of price for ore and was subject to ad valorem tax placed on proceeds of mine.

Judgment affirmed, with costs.

West Headnotes

Mines and Minerals 260 ⚿87

260 Mines and Minerals
260III Operation of Mines, Quarries, and Wells
260III(A) Statutory and Official Regulations
260k87 k. Licenses; Severance and Production Taxes. Most Cited Cases
(Formerly 371k348)

Where plan of federal government sought to stimulate production of copper by finding price scale which would make marginal production of copper feasible and original plan was to buy overquota copper at premium price directly from mine, but sales through commercial channels and payment of difference between ceiling price and premium price was substituted for purposes of convenience, amount of premium payments made to producers in addition to sums received commercially for ore was part of price paid for ore and not independent income and was subject to ad valorem tax placed on proceeds of mine.

Taxation 371 ⚿2525

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2525 k. Mineral or Mining Property. Most Cited Cases
(Formerly 371k348.1(5), 371k348)

Where taxpayer was allowed deduction of $74,271 from assessed valuation of mine as money to be spent for developing ore deposit, value of undeveloped ore deposit would arbitrarily be fixed at $74,271, and such amount would have to be added to value of mine for tax purposes.

**198 *299 Woodburn, Forman & Woodburn, Reno, for appellant.

W. T. Mathews, Atty. Gen., Alan Bible, George P. Annand, Robert L. McDonald, Thomas A. Foley, Deputy Attys. Gen., and C. J. McFadden, of Ely, for respondents.

MERRILL, Justice.

This is an appeal from judgment of the trial court dismissing the complaint of appellant in an action brought by it to recover the sum of $18,175.83 taxes paid under protest. The sole question involved in the appeal is whether government premium payments made to appellant in addition to sums received by it for sale of its ore, can properly be regarded as mine proceeds and therefore subject to tax under the revenue laws of this state. The appeal comes to us upon a stipulated statement of facts.

During the first six months of 1945 appellant extracted from its mining properties in White Pine County, Nevada, 1,041,759 tons of ore containing gold, silver and copper. From this ore, after smelting

and refining, appellant received through sales in ordinary commercial channels the sum of $2,510,834.05. This sum plus the sum of $606.71 received in royalties, was duly reported to the Nevada Tax Commission as gross yield of the *300 mine for the period in question. Appellant also reported to the Commission as proper deductions from its gross yield the sum of $2,712,057.65, thus making return that its deductions exceeded its gross yield and that it had accordingly received no net proceeds from its mine during this period for which tax might be imposed.

During the period in question a ceiling price of 12 cents per pound of copper had been imposed by the Federal Office of Price Administration and the proceeds of appellant's sales of copper had been limited accordingly.

In addition to the gross yield reported by it, appellant had also received for its production during this period the sum of $862,162.75 paid to it by Metals Reserve Company, a statutory subsidiary of Reconstruction Finance Corporation. These payments had been made pursuant to the terms of a federal program inaugurated jointly by the War Production Board and the Office of Price Administration and known as 'Premium Price Plan for Copper, Lead and Zinc'. Under the plan a quota (in the main based upon 1941 copper production with consideration given to cost of production) was fixed by Metals Reserve Company for each copper producing mine. For all production in excess of the quota Metals Reserve Company paid the sum of 5 cents per pound. The sum received by appellant from Metals Reserve Company therefore reflected the sum of 5 cents per pound for overquota copper produced by it during this period.

The tax commission insisted that these payments be include as part of the mine's gross yield and upon such addition levied its tax of $18,175.83. This amount was paid by appellant under written protest and this action was duly brought for its recovery.

There is no dispute as to the nature of the tax as provided by our revenue act. It is recognized by all parties that the tax is an ad valorem tax rather than an income tax or occupation license; that the tax is not upon the mine itself nor upon **199 the mining enterprise but is solely *301 upon the proceeds of the mine. The dispute before us is as to the character of the sums provided by Metals Reserve Company. It is contended by respondents that these sums constitute mine proceeds. It is contended by appellant that they do not. Authority upon the proposition is limited to decisions of the courts of two western states, Montana and Utah. The authority is cleanly divided, Montana supporting the position of appellant and Utah that of respondents. In this opinion we follow the views of the Utah court.

In support of its position appellant points out that the net proceeds tax is a tax upon the value of ore or its product; that the sale price is recognized as the primary measuring rod in determination of value; that the sales here involved were made through ordinary commercial channels and the price received was 12 cents a pound; that no sales were made to Metals Reserve Company; that the premium payments, accordingly, came from a source entirely independent of the sale itself. Appellant therefore concludes that the premium payments here involved had no relation to the value of the ore and were not part of any sale price; that while they may have constituted income of the enterprise, this must be recognized as a factor entirely apart from the value of the proceeds themselves.

Klies v. Linnane, 117 Mont. 59, 156 P.2d 183, 185, supports and illustrates appellant's position. There it is stated:

'Production not otherwise practicable may artificially be made so, either by increasing the price of the product, or by rewarding the production otherwise, as by subsidy or bonus payment. An essential difference between the two methods is that a direct price increase ordinarily not only rewards and thus encourage additional production, but also makes more profitable the production which would have existed without it; on the other hand, the subsidy or bonus method can more practicably be limited in application to the additional production. *302 Either method would tend to increase the production of strategic metals for war purposes by making profitable an enterprise which otherwise could not pay its way, and therefore, could not operate. Both methods increase the proceeds and therefore the value of the enterprise by making it profitable, but only the price rise method increases the value of the product. Thus they are similar only in increasing the income from, and the value of, the enterprise.

N-26

'* * * But the tax upon the net proceeds of mines is not based upon the value of the enterprise, nor upon all possible income therefrom. It is based only upon the net value of the ores produced. Income in addition to that received as the net value of the product may perhaps be taxable as income, but it is clearly not taxable as 'net proceeds of mines' * * *.

'* * * the value, however fixed, is the price paid and received for the metal, and other rewards, incentives or incidental income are not part of that value; they are therefore not part of the tax base.'

For an independent analysis of the character of the premium payments we turn to the plan itself and to the circumstances and conditions which determined its ultimate form. See: Seventy-ninth Congress, Second Session, Senate Subcommittee Print Number 8, 'Premium Price Plan for Copper, Lead and Zinc; Its Administration With Particular Regard to Small and Marginal Mines,' (which bulletin forms a part of the stipulated facts in this case). Page references following are to pages of this bulletin.

Following the outbreak of war in Europe, American metal markets were unstable, with sharply fluctuating prices. Copper advanced from 10 1/2 cents in July, 1940, to 12 cents in September. In April, 1941, a 12 cent ceiling was fixed. Military requirements were growing steadily and the necessity for maximum expansion of domestic production was indicated. Increased production automatically resulted in rapidly increasing costs as it became necessary to resort to lowergrade ores and *303 more costly mining. By the end of the year it had become clear that domestic production could not be increased to the necessary extent 'without establishing price scales that **200 would make profitable the mining of marginal ores.' (Page 42.)

To this end various plans received consideration by federal stabilization and production officials and some were actually placed in temporary operation. Alternative proposals included a general raising of the 12 cents ceiling and direct government purchase at a price of one cent plus out-of-pocket costs. The latter method was actually applied for a short period in the case of certain Michigan mines. General ceiling raises, however, were rejected on the basis of experience gained during World War I when such practices had resulted in copper reaching a level of 26 cents a pound, almost double the 1914 price. A 'two-price' plan was first proposed August 4, 1941.

With the entry of the United States into war following the attack on Pearl Harbor, the Office of Price Administration was ready to accept the two-price system applicable to lead and zinc. Copper was not at first included, the feeling apparently being that the cost-plus arrangement was adequate to meet the circumstances. The original plan for lead and zinc provided for government purchase of overquota production under a differential price arrangement. This was to be accomplished by having Metals Reserve Company purchase all incremental production and resell it at the ceiling price, absorbing the loss.

In January, 1942, copper was included in the plan. Federal Loan Administrator Jesse Jones advised O.P.A. under date of January 12, 1942, 'You are advised that, in accordance with your suggestion, Metals Reserve Company will, at your request, for a period of 2 1/2 years from February 1, 1942, pay * * * 17 cents per pound, Connecticut Valley, for copper, for increases above 1941 production governed by quotas to be fixed by you with our approval. * * * Any metals so acquired by Metals *304 Reserve Company which are not used for or by the Government will be subject to your allocation at the ceiling price fixed by the Price Administrator * * *.' (Page 44.) On January 13 the program was explained to the public through a press release which contained this statement: 'All the overquota output acquired by the Metals Reserve Company will be used for, or by, the Government or will be sold, subject to Government allocation, at the regular Office of Price Administration ceiling prices. All quota production must, of course, be sold by producers at or below the Office of Price Administration ceiling prices. Hence the premium-price program to stimulate additional production will not lead to higher prices to the consumer.' (Page 217.)

By February 1, however, details of the plan still remained to be worked out and the feature of direct government purchase, therefore, was not yet feasible. To avoid delay in the plan's operation, arrangements were made to proceed temporarily without application of that feature. A press release advised: 'Further details of this plan will be announced in due course. In the meantime all producers should continue to sell

their output through regular channels in the ordinary way, but should keep all data covering production, sales, and settlements so as to be in a position to make out the affidavit which will be required of them. If, at any time, any producer has thus sold his excess output at ordinary market prices, he will not thereby be deprived of the benefits of this arrangement, since in such cases an equivalent quantity of material will be eligible for sale, at the higher prices, from subsequent deliveries.' (Page 218.)

Up to this date it was apparent that the plan contemplated actual sale to the government of the overquota output at the higher or premium price. Sale of overquota output through regular channels was merely a stopgap procedure adopted to permit immediate operation of the plan.

On February 9, 1942, the terms of the plan itself were ***305** announced and for the first time it was indicated that sales of overquota output were to be made through commercial channels as a regular feature of the plan. It can only be concluded that in the interests of time and convenience, an unnecessary procedural change was regarded as unwise. The statement of the plan included the following language: 'Premium prices of 17 cents for copper * * * will be paid for a period of 2 1/2 ****201** years beginning February 1, 1942 * * *.' The purpose of the plan and the reason for its necessity were clearly stated: 'The only purpose of the premium-price plan is to compensate for extra costs involved in bringing out additional metal output.' (Page 220.)

It is notable that the term 'price' is used consistently throughout government releases and correspondence on the subject. The government was seeking a 'price scale' which would make profitable the mining of marginal ores; the 17 cent total payment was a 'premium price'; the plan was a 'two-price plan'; the method or technique utilized was 'differential pricing'.

Upon consideration of this factual background we find the conclusion inescapable that the premium payments made by Metals Reserve Company were in character a part of the price paid for the ore produced and did not constitute an incentive reward unrelated to price or value.

This is supported by the fact that under the various alternative plans considered and ultimately rejected there could have been no question but that the sum received was the sale price. For example, had the government accomplished its end by a general raising of the price ceiling there would, in lieu of the premium payment here involved, have been a higher price through ordinary commercial channels. Had the government continued with the cost-plus arrangement applied to the Michigan mines there would have been no question but that the sums paid were the sale price of the ore itself. Under the 'premium price plan' itself, as originally conceived and announced with direct government ***306** purchase of overquota production, there could have been no question but that the premium was part of the price paid. Even without the feature of direct government purchase the government clearly regarded the 17 cents, being the sum of the ceiling price and the premium payment, as itself constituting a price: the 'premium price' from which the plan derived its name.

It should be noted as well that under the 12 cent ceiling there was no free and open market in which the true value of the product could be ascertained. The sale price was artificially fixed and artificially supplemented. Had it been permitted to rise, even under attempts at control, it may well have risen to the World War I price of 26 cents. The premium payment, in the light of the existing ceiling, cannot then be said to have been a subsidy over and above the actual value of the mine proceedings. It was, rather, a partial restoration to the producer of the value of his product lost to him by imposition of the ceiling.

In summation, then, the circumstances of our war economy and the necessities of war production demanded additional production which could not be brought out without the incurring of extra costs by the producer. Such production therefore necessitated the making of extra-cost compensation to the producer in addition to the 12 cents per pound. Can it reasonably be said that the character of such compensation varied as alternative methods or techniques were employed by the government in its experimental efforts to find the program most generally satisfactory? If so, it must also be said that the 'value' of the mine product varied accordingly, dependent not on those economic factors which would ordinarily affect it; dependent not on the extent of compensation received nor the considerations which prompted such

compensation; but rather dependent entirely upon administrative method in the providing of such compensation. In our view such a proposition cannot be supported as reasonable.

In our reasoning and analysis we therefore follow the ***307** views of the Utah Supreme Court. Combined Metals Reduction Company v. State Tax Commission, 111 Utah 156, 176 P.2d 614; United States Smelting, Refining and Milling Company v. Haynes, 111 Utah 172, 176 P.2d 622; Combined Metals Reduction Company v. Tooele County, 111 Utah 188, 176 P.2d 630; Kennecott Copper Corporation v. State Tax Commission, Utah, 212 P.2d 187. The premium payments here involved are held to be mine proceeds and accordingly subject to tax.

The judgment of the trial court is affirmed with costs.

BADT, C. J., and EATHER, J., concur.

Nev. 1951
Consolidated Copper Mines Corp. v. State
68 Nev. 298, 231 P.2d 197

END OF DOCUMENT

Marla Turner
5708 Solimar Lane
Las Vegas, NV 89130

Good afternoon Mr. Chairman and members of the Committee. My name is Marla Turner. I'm a native of Nevada and lifelong resident of Las Vegas. I'm here today to express my support for SJR 15.

We all know that when the mining industry's tax structure protections were written into the state Constitution back in 1864, Nevada was a very different place. The import of mining's contributions to the state and its place in the landscape of Nevada's economic well-being was huge, and made conditions conducive for the industry to successfully argue for such protections.

Today, mining continues to play a significant role, both economically and historically. However, the recognition that mining no longer needs such protections has been well-known to the state and its citizens for at least 25 years. In 1987, my step-father, Assemblyman Marvin Sedway declared, in his rather colorful way, that mining owners were not paying their fair share and began efforts to repeal its Constitutional protections. Two years later, Nevadans voted overwhelmingly – by 3:1 - in favor of Senate Joint Resolution 22 which increased mining's taxable contribution to 5% of its net proceeds but also had the consequence of limiting the state's ability to impose any other tax on the industry.

Fast forward to today. Nevada faces unprecedented budget shortfalls and simultaneous, desperate needs for revenue to address big and costly problems within our State: deteriorating roads and highways, an education system at the bottom in the nation, threats to public safety due to reduced workforces, and a myriad of efforts and programs to put our residents and the nation's hardest hit back to work.

So the question then, is how do we raise revenue in a way that causes the least distress for the most? I don't have all the answers, but surely, the solution begins with creating a level playing field that doesn't allow exceptions for those who don't warrant it or need it.

Mining owners believes they're paying plenty. I'm sure every business in the State feels exactly the same way, that they're paying plenty. Nevada residents feel like they're paying plenty, too, when they pay their property taxes or see a slice of their paycheck go to the federal government. And yet, no one but mining tries to get out of paying their fair share by basically saying, "I don't want to."

The needs of the State of have become dire and the reasons to protect mining have become moot. Many of mining's owners who our Constitution currently protects are, in many cases, foreign-based companies, who are getting rich off of Nevada's limited precious resources and taking their money out of Nevada. It's time to stop that.

Additionally, I believe the day will come when the proverbial well runs dry and mining industry owners pack up their belongings, leaving a bunch of unemployed people and holes in our ground in their wake. Nevada Governor Bob Miller said pretty much the same think in his State of the State speech (pps. 17-19) in 1989:

"The fact is this: mining does not pay its fair share to the state. A gold mine that would pay a million dollars in state and local taxes in Nevada pays $8 million in Colorado. And you know, that might be tolerable if the mines were taking a renewable resource from the ground. But they're not. One day, the ore will be gone. And so will the companies. And so will that source of income."

We can't ever afford to continue giving mining owners protections that: (1) are no longer warranted; (2) discriminate against other industries not granted similar protections; and (3) allow that same industry to take their proceeds out of Nevada, but most *especially* not at a time like now, when the State is facing such significant revenue challenges.

I urge you to vote in favor of this SJR 15 so we can start asking mining owners to pay their fair share and welcome them into the same family where every other industry in our State lives.

B-2

READ
TRS/Mary

Al Martinez President of SEIU Nevada and Chair of the We Are Nevada Coalition

In the 2013 study by ITEP Institute on Taxation and Economic Policy recent study "Who Pays?" documents in state-by-state detail, the precise distribution of state income taxes, sales and excise taxes and property taxes paid by each income brackets. This report concludes what we have always known that all state ask more from low- and middle-income families than from the wealthiest. It also finds:

- States praised as "low tax" are often high tax states for low and middle income families.

We as a community have burdened our working families long enough. In Nevada our lowest economic bracket pays about 10% of their income in either sales or property tax. It is time all big business becomes fully vested in doing business in our state and not only look at their profit margin but in the well being of our community as a whole.

It is time we passed SJR 15. It is time Mining to become a good community partner.No big business should be Given special privileges. not while we struggle for resources to educate our children, not while we struggle to care for the most vulnerable. And not by stripping our social services that provide much need services to our communities.

For Nevada to continue to thrive we must broaden our revenue beyond tourism and sales, which would have only positive consequences for our health and human services.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND MINING

Seventy-Seventh Session
May 2, 2013

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Skip Daly at 1:16 p.m. on Thursday, May 2, 2013, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Great Basin College, High Tech Center, Room 137, 1500 College Parkway, Elko, Nevada 89801 Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Skip Daly, Chair
Assemblyman Paul Aizley, Vice Chair
Assemblyman Paul Anderson
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblyman John Ellison
Assemblyman Ira Hansen
Assemblyman James W. Healey
Assemblyman Pete Livermore
Assemblywoman Heidi Swank
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 1058

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Clark County Senatorial District No. 11
Assemblyman Tom Grady, Assembly District No. 38
Senator Mark Manendo, Clark County Senatorial District No. 21
Assemblywoman Lucy Flores, Clark County Assembly District No. 28

STAFF MEMBERS PRESENT:

Amelie Welden, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Cheryl Williams, Recording Secretary
Ashlynd Baker, Committee Assistant

OTHERS PRESENT:

Steve Walker, representing Lyon County
Beverlee McGrath, representing Hidden Valley Horse Rescue; Best Friends Animal Society; Nevada Humane Society; Northern Nevada SPCA; Nevada Political Action for Animals; Lake Tahoe Humane Society; Lake Tahoe SPCA; Compassion Charity for Animals; Pet Network of Lake Tahoe; Wylie Animal Rescue Foundation; PawPack; and Lake Tahoe Wolf Rescue
Margaret Flint, representing Nevada Humane Society; and Canine Rehabilitation Center and Sanctuary
Christine Schwamberger, representing Nevada Political Action for Animals
Kevin O'Neill, Senior Legislative Director, American Society for the Prevention of Cruelty to Animals
Kristina Swallow, representing City of Las Vegas
Holly Haley, representing The Humane Society of the United States
Stacia Newman, President, Nevada Political Action for Animals
Neena Laxalt, representing Nevada Cattlemen's Association
Alejandro Golindo, President, Mexican Federation of Charreria
Susane Tagauyev, Private Citizen, Carson City, Nevada
Don Molde, Private Citizen, Reno, Nevada
Denise DeLucia, Private Citizen, Las Vegas, Nevada
Robin Warren, Private Citizen, Las Vegas, Nevada

Chair Daly:
[Roll was taken and housekeeping matters were explained.] Now that we are in the crossover, as they say, we have people from the Senate here, and other people wanting to testify in Committee, so we will get right to it. We are going to start with Senate Joint Resolution 14. We will go ahead and open the hearing on Senate Joint Resolution 14. Welcome to the Assembly, Senator Ford, and welcome back again, Assemblyman Grady.

Senate Joint Resolution 14: Urges Congress to enact the Lyon County Economic Development and Conservation Act. (BDR R-1114)

Senator Aaron D. Ford, Clark County Senatorial District No. 11:
I am here to speak about Senate Joint Resolution 14. The Lyon County Economic and Conservation Act, House Resolution 696, was first introduced in the U.S. House of Representatives on February 14 of this year by Congressman Steven Horsford. [Mentioned letter in support (Exhibit C). Read from prepared testimony (Exhibit D).]

Those are important figures in a county that has one of the highest, if not the highest, unemployment rates in our state. Again, we are talking about 800 mining jobs, 500 construction jobs, and a plan to invest $80 million in infrastructure for the mine that can be used for other land uses and economic development. [Continued to read from prepared testimony (Exhibit D).]

Assemblyman Tom Grady, Assembly District No. 38:
This area that we are talking about is in my district. In fact, it is in my hometown of Yerington. We have had mining in the Yerington area for years. The Anaconda Copper Mine, which is now owned by British Petroleum (BP), was in that area. They were tremendous corporate citizens while they were there. Because of that, we are welcoming mining back into our area.

As Senator Ford mentioned, we have had high economic stress levels with the unemployment and the foreclosures, and we are looking at this as a real boom. Congressman Horsford has worked very judiciously on this piece of legislation, along with Congressman Amodei. They are working hand-in-glove with this. As was mentioned, and as is mentioned in the resolution, not only will Yerington see economic growth with the property that they will receive from this, but they are working hand-in-glove with Nevada Copper in order to expand the area that we have.

The Wovoka Wilderness area is named after a Paiute Indian who years ago, as a medicine man who lived along the east Walker River, developed the

Ghost Dance. The area that we are looking at is a national wilderness area, and it is probably about 20-25 miles away from the mining area. It is in the east part of Smith Valley, where the mine is just outside the City of Yerington.

We are looking forward to this bill passing. I am not sure if it was through my friend's presentation in the Senate, or because we have Congressman Horsford going with us on this bill when it was presented in the Senate, but I will tell you that it passed the Senate the same day as the presentation was made. We were very, very pleased with that. We have quite a few proclamations from different areas that are being forwarded to the Washington delegation for their assistance. I would welcome any questions about the area, or about the mine. However, again, I want to stress that the people in Yerington and Lyon County are welcoming this mine into our area.

Assemblyman Ellison:
With this bill proposed, Lyon County is hopeful that this new mine will create 900 new employees. Is that correct?

Senator Ford:
It will create 800 mining jobs and about 500 construction jobs.

Assemblyman Ellison:
With these increases it will take that 2.5 percent unemployment even higher. Nevada's unemployment is really increasing. With the bill that is being proposed on the fourth floor right now in the Assembly Committee on Taxation, Senate Joint Resolution 15 of the 76th Session, what kind of impact is that going to have on the future of that mine? I can tell you, as we speak, a lot of these mining companies are looking at shutting down the smaller mines.

Senator Ford:
The short answer from me is that I have no idea. Assemblyman Grady may have a different answer.

Assemblyman Grady:
I will tell you that the mine, just within the last three weeks, secured $200 million worth of financing. As we know, the gold prices have dropped from $1750 per ounce down to $1450, roughly. If it drops much further, they will be looking at what else to do. I would remind you that in this particular project there will be a tunnel shaft. There will also be open-pit mining. They have the headframe already built for the underground mine and they are progressing. They have put about 50 people to work so far, just in the preparations. They would like to do phases one and two together so they can do the shaft and they can do the open-pit mining. They are all still on schedule

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Seventh Session
May 2, 2013

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 1:06 p.m. on Thursday, May 2, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Lundberg Hall, Room 114, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblywoman Peggy Pierce, Vice Chairwoman (excused)

Minutes ID: 1056

GUEST LEGISLATORS PRESENT:

Assemblyman John Ellison, Assembly District No. 33
Assemblyman Ira Hansen, Assembly District No. 32
Senator Michael Roberson, Clark County Senatorial District No. 20

STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Kevin C. Powers, Chief Litigation Counsel
Gina Hall, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Tim Crowley, President, Nevada Mining Association
James L. Wadhams, representing the Nevada Mining Association and Newmont Mining Corporation
Michael J. Brown, Vice President, Corporate and External Affairs, North America, Barrick Gold Corporation
Richard Perry, Councilman, City Council, City of Elko
Jim Garza, Member, Board of Directors, Great Basin Regional Development Authority; and Director, Community and Economic Development, White Pine County
Jeff Zander, Superintendent, Elko County School District
Marla Turner, Private Citizen, Las Vegas, Nevada
Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada
Mayra Ocampo, representing the Service Employees International Union Nevada, Local 1107; and We Are Nevada Coalition
Ruben R. Murillo Jr., representing Clark County Education Association; and Nevada State Education Association
Guy Louis Rocha, Private Citizen, Carson City, Nevada
Christine McGill, representing the Human Services Network
Joe McCarthy, Private Citizen, Silver City, Nevada
Terry Rubald, Chief, Local Government Services, Department of Taxation
Dana R. Bennett, Ph.D., Owner, Bennett Historical Research Services, Phoenix, Arizona
Angie Sullivan, Private Citizen, Las Vegas, Nevada
Demar Dahl, Chair, Board of Commissioners, Elko County
Graham Hollister, Jr., Private Citizen, Genoa, Nevada
Vince Agamenone, Private Citizen, Lyon County

Chairwoman Bustamante Adams:
Today we are going to be hearing Senate Joint Resolution 15 of the 76th Session. I would like to welcome the residents in Elko and Las Vegas, and thank you for joining us. We have a limited amount of time, and there are a lot of people in the audience. Because of our time restriction, we have organized it so that the stakeholders in support have elected some individuals to represent them as a group voice, and the same for those who are opposed to S.J.R. 15 of the 76th Session. I will call those individuals first. The concern is that I will lose the video feed in Elko and Las Vegas, so we have to be mindful of the time. There are also two other committees that start right after Taxation and I may lose my Committee members as well. With that I will make sure I keep it in order.

We will start with Kevin Powers, who is already at the witness table. He is from the Legal Division of the Legislative Counsel Bureau (LCB). He is going to go over S.J.R. 15 of the 76th Session for the Committee members. This will be our time to ask him technical questions, to make sure we understand it.

Senate Joint Resolution 15 of the 76th Session: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Kevin C. Powers, Chief Litigation Counsel:
As you know the Legislative Counsel Bureau (LCB) Legal Division is nonpartisan staff. We do not urge or oppose any particular piece of legislation. We provide the Committee and the Legislature with legal advice and counsel regarding the legal consequences and effects of legislation.

Before you is Senate Joint Resolution 15 of the 76th Session, a proposed constitutional amendment. Under Article 16, section 1, of the *Nevada Constitution* this proposed constitutional amendment was passed by the 76th Session of the Legislature in 2011 and has to be passed by the 2013 Legislature in order for it to go on the 2014 ballot. If it is passed, it will go on the ballot. If approved by the voters in the general election on November 4, 2014, it would then become part of the *Nevada Constitution*.

To understand the legal effect and consequences of S.J.R. 15 of the 76th Session we need to start with a basic principle of state constitutional law. The state constitution is not a grant of power to the Legislature; it is a limitation on power. So the powers of the Legislature and the *Nevada Constitution* are virtually unlimited, unless expressly limited by the *United States Constitution*.

Currently under Article 10 of the *Nevada Constitution,* there are certain limitations imposed on the Legislature on how they can tax mining, mining claims, and minerals. The first limitation is in Article 10, section 1, subsection 1. That creates a property tax and specifically provides an exception that mines and mining claims are not subject to a property tax, but may only be taxed as provided in section 5 of Article 10.

The first thing that S.J.R. 15 of the 76th Session does is repeal or remove that limitation on legislative power, thereby, as a result, mines and mining claims would be subject to the property tax in Article 10, section 1, unless there was another provision of the *Nevada Constitution* that authorized the Legislature to exempt those mines and mining claims from the property tax.

The second main provision in Article 10 dealing with the taxation of mines is section 5. That provision requires the Legislature to impose a net proceeds tax that may not exceed 5 percent of the proceeds. Article 10, section 5, also provides that no other tax may be imposed on minerals or the proceeds until the identity of those minerals or proceeds are lost. Article 10, section 5, also provides for a system for the taxation of patent and mining claims. What S.J.R. 15 of the 76th Session will do is repeal all of the provisions of Article 10, section 5. The end result of the removal of the exception in Article 10, section 1, subsection 1, and the repeal of Article 10, section 5, would be to remove the limitations on legislative power in Article 10, the result being that the legislature would be restored to its full power to determine how to best tax mines, mining claims, and minerals. So that is the purpose of S.J.R. 15 of the 76th Session, to remove those limitations on legislative power that currently exist in the *Nevada Constitution*.

One legal effect or consequence that has come up is what happens to the existing statutes if S.J.R. 15 of the 76th Session becomes effective and the constitutional provisions are repealed. This office has issued an opinion letter (Exhibit C), and as a quick summation of that opinion letter it is our belief that the repeal of the provisions in Article 10 will not affect the existing statutes that provide for the net proceeds tax in *Nevada Revised Statutes* (NRS) Chapter 362. Our analysis is that the repeal of the constitutional provisions will not repeal by implication those provisions that allow the net proceeds tax on minerals that already exist in NRS Chapter 362.

Finally, it has been stated that, because there is a possibility that there will be questions about whether the existing net proceeds tax is repealed, some mining companies may not pay that tax. To understand the legal consequences with regard to the payment of taxes, courts generally apply the rule that in order to challenge a tax, you have to pay the tax under protest and litigate while you

are paying that tax. Therefore, if a mining company wanted to challenge the net proceeds tax, if S.J.R. 15 of the 76th Session becomes effective, they would still have to continue to pay that tax under protest and litigate while they are paying that tax. They would not be able to stop paying the tax. Indeed, if they stopped paying the tax, they may lose their right to challenge the tax by their failure to pay it.

Madam Chairwoman, that covers the main principles and points that I wanted to cover in the overview of S.J.R. 15 of the 76th Session. I am now open to any questions that the Committee members may have.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblywoman Neal:
If S.J.R. 15 of the 76th Session repeals section 5, then the guidepost puts us back to looking at what, the constitutional debates? This provision about net proceeds was added in 1906 through a constitutional amendment. If that language is no longer there, we then have to figure out what determines our language. Would we not go back to the framers' intent, on their discussion of what they expected, and how they expected proceeds of a mineral to be treated?

Kevin Powers:
Once the limitations are removed by S.J.R. 15 of the 76th Session it would be up to the Legislature to determine how to properly tax mines and mineral claims. Without that limitation in the *Nevada Constitution* it would be a policy matter for the Legislature to determine. They would not have to go back to the original intent of the constitutional provision because that original constitutional provision in 1864 would be different from what the *Nevada Constitution* would look like if S.J.R. 15 of the 76th Session passes. The original *Nevada Constitution* in 1864 said that mines and mining claims could only be taxed through proceeds and, therefore, there was a limitation on what the Legislature could do. Senate Joint Resolution 15 of the 76th Session removes those limitations; therefore, it becomes a policy matter for the Legislature to determine how to best tax mines, mining claims, and minerals.

Assemblywoman Neal:
Going back to constitutional law, when you learn how to make a decision you have guideposts. Before it was decided how the mineral would be treated, within the debates, there were several discussions about whether it should be this or that. I will just keep it that simple. Are you saying that we

would not even think about that language before it became a part of the *Nevada Constitution*?

For myself, to stretch yourself beyond the debate into a new arena where your guideposts would be case law from the Supreme Court or other policy decisions, takes you into a place where you do not necessarily have a foundation. If I was going to challenge something I would want to know what the legal foundation was for how you establish that language. What did it come from? How did it originate? Where did it originate? How did you achieve that policy decision?

If this passes and it comes out of the *Nevada Constitution*, what then do you rely on? I thought you had to look to what the original intent was. Now the Legislature can establish that intent, but it is the *Nevada Constitution*. We did not make that whole entire document.

Kevin Powers:
I think the best answer to your question is to go back to that principle of state constitutional law, that the *Nevada Constitution* is not a grant of power to the Legislature, it is a limitation on power. The Legislature does not need language in the *Nevada Constitution* in order to tax mining. They could tax it without any language in the *Nevada Constitution*. What the existing language in the *Nevada Constitution* does is limit the legislative power. The purpose of S.J.R. 15 of the 76th Session is to remove those limitations, restoring full power to the Legislature to make the policy determination on how to tax mining.

Assemblywoman Kirkpatrick:
I want to be clear, because there are a lot of things swirling around about what this does and does not do. I want to understand from our perspective, and I consider you as nonpartisan staff to be from our perspective. If it comes out of the *Nevada Constitution*, there is some time frame before the Legislature meets again. I would think that there would be a two-thirds requirement to make a change, as there is with other property tax matters. What happens if the Legislature does not do the second piece of this? What happens to those dollars?

My second question is, currently we do not necessarily tax everybody else at the 5 percent. Where does that 5 percent fit in? Is that the 3.64 percent piece or is that the 5 percent piece, because I am not clear on how that integrates back to what everybody else says. Our law is very clear that everything must be uniform and equal, so in my mind, based on that, it would appear that there is probably a tax break. I am not sure how that works. I do not understand

how it works if the second piece of this does not come along. I am asking these questions so it is clear to voters if it goes to the ballot box, both sides of what is really out there. We have seen headlines that say one thing, so I want to be clear on what it truly means in this bill.

Kevin Powers:
This will be a somewhat elaborate and lengthy answer to your question, but I think it is important to comprehensively answer those questions.

Your first question is, essentially, what happens to the existing statutes if S.J.R. 15 of the 76th Session becomes effective, and really the legal issue is, does the repeal of the constitutional provisions also repeal by implication the statutes? It is the opinion of our office that the repeal of the constitutional provisions does not repeal by implication the statutes. Those statutes remain in effect, for several reasons.

First, there is another provision of the *Nevada Constitution*—Article 1, section 1, subsection 6—that authorizes the Legislature to exempt personal property from the property tax. Therefore, the net proceeds, which are now exempt from the personal property tax, will continue to be exempt from the personal property tax even after S.J.R. 15 of the 76th Session becomes effective, because that other constitutional provision will still be in place.

Second, when courts look to determine whether statutes are repealed by implication, they interpret those statutes in a manner to uphold them if there is any reasonable basis for doing so. We believe that the existing net proceeds statutes in NRS Chapter 362 can be reasonably interpreted as a tax on mineral production, severance, or extraction, and therefore the repeal of these constitutional provisions will not repeal those existing statutes because they would then be a legitimate tax on mineral production, extraction, and severance.

One other point, the Legislature is not limited once these constitutional provisions are removed to one type of taxation of mining. Once the constitutional exemption for property tax is removed, the real property—the mines and the mining claims—will be subject to real property tax. The net proceeds, however, are not real property. They are personal property, and, as I mentioned, they will still be exempt from the personal property tax under Article 10, section 1, subsection 6, and then those net proceeds would still be taxed under NRS Chapter 362, which provides for the 5 percent tax on net proceeds.

I understand the arguments have been made by the mining industry that once you remove these constitutional provisions, under the uniform and equal clause, the net proceeds will have to be taxed at the statutory cap of 3.64 percent, but that is the property tax. So, if net proceeds were being taxed as personal property, then yes they would be limited to the 3.64 percent, but NRS Chapter 362 would be a tax on mineral production, severance, and extraction. It would not be a property tax, and therefore the Legislature can impose a different rate on the extraction of the minerals.

Courts have consistently held that a taxation on an activity, a business, or a privilege, such as the privilege to extract minerals, is not a property tax, it is an excise tax, and therefore the uniform and equal clause in the Nevada Supreme Court has held on numerous occasions the uniform and equal clause does not apply to excise taxes; it only applies to property taxes. Therefore, as long as NRS Chapter 362 is viewed as an excise tax on the mineral production, extraction, and severance, it is not subject to the uniform and equal clause, and it will still remain in place after S.J.R. 15 of the 76th Session, if it becomes effective, repeals those constitutional provisions.

Assemblywoman Kirkpatrick:
I have a couple more questions, because I do not remember last session going into this depth and I want to be clear.

Is geothermal included in that, because they do fall under this same tax piece?

So nothing changes for the Legislature, as far as the collections and all of that, until the next legislative session when they choose to make some differences? So, currently mining prepaying their stuff does not change. It does not change because the 5 percent is still there. That does not change until the next legislative session if they choose to take the excise tax and do the additional percentage, correct?

Kevin Powers:
First off, let us quickly deal with geothermal. Geothermal pays a net proceeds tax now, but they pay it at a different rate than other mining operations. That would still remain in place. Geothermal also has mines and mining claims. Because S.J.R. 15 of the 76th Session removes the exemption for real property tax, all mines and mining claims would be subject to the real property tax, except possibly geothermal, because there is another provision in the *Nevada Constitution*, Article 10, section 1, subsection 8, that allows the Legislature to exempt energy production from real property tax. So geothermal probably will still enjoy its exemption from the real property tax, and it will still

be taxed at the same rate that it has been in NRS Chapter 362. I hope that addresses your question with regard to geothermal.

What will happen if S.J.R. 15 of the 76th Session is ratified by the voters and becomes effective? First off, the Legislature could pass legislation this session that becomes effective only if S.J.R. 15 of the 76th Session is passed by the voters. This legislative session could adjust the statutes any way it wanted contingent upon approval of S.J.R. 15 of the 76th Session. If, however, the Legislature chooses not to take that route, then all the existing statutes remain in place and the Department of Taxation should collect the net proceeds tax like it has been. It would be up to the next Legislature to determine whether they want to change that tax or leave it in place.

Assemblyman Hickey:
If in fact a new tax was defined as an excise or severance tax, is it not a tax or something we could do in, or apart from, removing the constitutional place that mining now occupies? My simple question is could we not do that sort of thing anyway?

Kevin Powers:
The short answer is no. The reason is the constitutional provision in Article 10, section 5, which was put in place in 1989. This specifically provides that there is a net proceeds tax and that no other tax shall be imposed on the mineral or its proceeds until the identity is lost. The legislative history from 1987 and 1989, when the resolution went through, shows clearly that the purpose of that provision was to make a single tax on the net proceeds and to prohibit any other tax. The legislative history is rife with references to the fact that the provision prohibited excise, severance, and production taxes that could be imposed in addition to the net proceeds tax. It was only the net proceeds that could be taxed, and that was the point of that constitutional provision.

Assemblyman Hardy:
Currently, how are construction, concrete, and aggregate-type products (construction materials) taxed? Will this have the same affect with minerals being taken off the *Nevada Constitution*?

Kevin Powers:
As I understand your question, if those activities do not involve extraction of minerals from the ground, then they are not going to be affected by S.J.R. 15 of the 76th Session. Extraction for concrete and construction materials production usually results in leftover material used in the construction or manufacture of something else. They are not actually extracting it from the ground. If they were extracting it from the ground, they would be affected by

S.J.R. 15 of the 76th Session. If they are just using the proceeds they acquire from a mining company, then they would not be affected by this, other than that the mining company may pass on additional costs to their end consumers.

Assemblyman Hardy:
Currently, for all those projects, 100 percent comes out of the ground for a concrete product. It is a mineral that comes from the ground. So the other products, for roads and highways, pretty much come out of the ground with the same extraction process, and they are classified as mines through the Occupational Safety and Health Administration.

Kevin Powers:
I agree. The actual extraction of the minerals for those processes will be affected by S.J.R. 15 of the 76th Session, the same way that any other extraction would be. I was just referring to once it is extracted from the ground, the actual process of turning it into another product will not be directly affected by it, but yes the extraction would be affected, assuming that the Legislature ultimately decides to change the statutes. Again, right now, if S.J.R. 15 of the 76th Session passes and becomes effective and the Legislature does nothing else, the existing statutes will remain in place. The only thing that will change is that there will be a real property tax imposed on mines and mining claims that is not imposed now, except potentially for geothermal operations. The net proceeds tax will remain the same. It would only be the actual real property tax on the land that would change.

Assemblyman Frierson:
I wanted to follow up on the question that was asked about whether we could have an excise tax regardless of this measure. You talked earlier about a tax on activity, and the language that is proposed to be removed says no tax may be imposed upon a mineral or its proceeds. Are you interpreting that as including activities, because it seems to me that is expressly dealing with property? I do not know if it was clear to me that we could not do the excise independent of this measure.

Kevin Powers:
It is our interpretation of this provision that no other tax may be imposed on a mineral or its proceeds until the identity is lost, that it prohibits any other type of tax on the activity of mining. The reason for that is prior to the constitutional amendment being proposed in 1987 and 1989 there was an opinion issued from this office that indicated that at that time the Legislature could impose a severance, activity, or extraction tax on mining, in addition to the net proceeds tax, based on the constitutional language that existed at that time.

One of the things that may have motivated the proposal of the constitutional amendment was in fact to ensure that no other tax except the one on net proceeds was imposed on mining, and, like I mentioned, the legislative history from 1987 and 1989 indicates that the purpose of this provision was to do just that, prohibit the Legislature from imposing an extraction, production, or severance tax on mining, and limit it to just the net proceeds tax. So that is the legislative history. Indeed, in a bill passed during 1989 to implement the new constitutional provision, the Legislature included a statement of legislative intent, specifically stating that it was the Legislature's understanding in passing the constitutional amendment that no other tax, including severance and extraction tax, would be imposed on mining, other than the net proceeds tax. So this language, in conjunction with the legislative history, we believe precludes the Legislature right now from imposing any other tax on mining operations, other than the one on net proceeds.

Assemblyman Frierson:
I like to get into the actual technical language, this being used in most of the legislation we consider. It seems to me we may be assuming the inverse. You spoke of the legislative intent of putting the language in, if we take out the language are we expecting interpretation to be the polar opposite? It seems like we are crossing our fingers that the court is going to interpret it as the complete inverse as far as legislative intent goes. Is there any concern of the likelihood that it would not be interpreted that way by simply removing it?

Kevin Powers:
We are confident in our interpretation. We believe it is supported by the fundamental rules of statutory and constitutional construction. It is not possible for us to guarantee with 100 percent certainty how a court will interpret the constitutional provisions. We think, going back to the basic rule that the *Nevada Constitution* is not a grant of power but a limitation, that once you remove the limitations the Legislature should have full power to tax mining in any way the Legislature deems appropriate as long as it does not violate any other constitutional provision, and there are no other constitutional provisions limiting taxation in the *Nevada Constitution*. Obviously, you would still have to follow the equal protection clause and due process from the federal constitution. We are confident once you remove those limitations full power would be restored.

Assemblyman Stewart:
If oil or natural gas were an issue, would they go under the geothermal category and the same provisions?

Kevin Powers:
Article 10, section 5, does cover oil, natural gas, and other hydrocarbons as mining. They are not in the same category as geothermal operations. Oil, natural gas, and other hydrocarbons are considered to be extraction of minerals in the same as any other extraction of minerals, such as gold, iron, copper, or anything like that. They are treated the same as those, not geothermal.

Assemblywoman Benitez-Thompson:
Walk me through this timeline once again. If S.J.R. 15 of the 76th Session passes here, then goes to the ballot on November 4, 2014, we see what the public's opinion of it is, and if it were to prevail, to pass. Are you telling us that mining, in order to be able to litigate any of this, would have to pay their tax bill under protest? Tell me how that tax assessment process would happen, thinking about the board of equalization and our county assessors. Are they using NRS Chapter 362 in order to create that tax bill and make that assessment?

Kevin Powers:
In order to answer your question we have to bifurcate. We have to distinguish between the real property taxation of the mines and the mining claims, which is the land, versus the taxation of the net proceeds, which is different. Net proceeds are considered personal property. If S.J.R. 15 of the 76th Session becomes affective at the general election, it is our belief and our opinion that NRS Chapter 362, dealing with the net proceeds, would remain in place and those net proceeds taxes would still be collected against the net proceeds of personal property the same way they are now. The real property component, the mines and the mining claims, and the land, would then be subject to the ordinary real property tax. The county assessors would have to assess the value of the mines and the mining claims, using the ordinary procedures from NRS Chapter 361, and give a value for the mines or mining claims using those procedures. That would be different, but only regarding the mines, the mining claims, and the real property, not the net proceeds, which are personal property subject to NRS Chapter 362.

Assemblywoman Kirkpatrick:
To follow up on Assemblywoman Benitez-Thompson's question, in some counties within our state they only do this estimate every five years. We are fortunate in the larger urban areas that they do it every year. Are you saying that if the assessment needed to be done and the assessors had to figure out how to do it, it really could be five more years until the next assessment was done?

Kevin Powers:
I would say no, because once new taxable property comes onto the real property tax rolls, the county assessors are going to go out there and assess that property, because it has not been assessed up to this point. Since S.J.R. 15 of the 76th Session would become effective in November, that would be during the period when the county assessors are starting the process for the next fiscal year. During that time period they would be going out and assessing these mines and mining claims for real property tax, because they had not done it in the past. It would be dereliction of duty for the county assessor to wait five years to assess new property that has been put on the property tax rolls.

Assemblywoman Kirkpatrick:
I feel bad picking on you and asking you the hard questions, but as you are nonpartisan staff I am appreciative and feel you are the right person. I am trying to get away from assumptions, as opposed to some certainties. I think this has made it very complicated and I just want it to be clear.

So the assumption is that they are going to do it by statute. They are not required to do it, because they can wait up to five years, but it would be in their best interest to allow it for the local coffers.

On that note, I want to be clear on what they are currently protected from. I do not remember if it goes just to the rural counties now, but in some instances I have heard that by taking them out of the *Nevada Constitution*, it would open it up to go into all of the counties. I think that the rural counties get around 2 percent and the state gets around 1 percent, but also do not fund the schools, because they make up the difference. Does that change within this policy as well?

Kevin Powers:
With regard to new real property being put on the tax rolls, the five-year cycle under NRS Chapter 361 for assessing real property only exists if you have a baseline assessment. If you have a baseline assessment then each year after that there is a formula for the county assessor to determine the value of the property and how to assess the property tax, and then within that five-year period they have to reassess again. But the five-year cycle cannot exist without a baseline determination of the value. The county assessors would have a duty, under NRS Chapter 361, to make an initial baseline assessment of the mines and mining claims that are now currently not subject to the real property tax but would be under S.J.R. 15 of the 76th Session.

Assemblywoman Kirkpatrick:
With what you just said, would these fall under the income portion of the property tax abatement that some businesses typically get?

Kevin Powers:
I would need to examine that abatement more closely. There is a possibility, if the abatement applies across the board to all types of property and if it had a particular classification of commercial property and this is considered commercial property, then they could potentially receive that abatement for the real property taxes. It is possible though that mining claims and mining property may be taxed in a different category, similar to open space or agricultural property. If that is the case, I do not believe that the abatement that was enacted in 2005 applied to that type of property. I will look into that further and get back to you for a more specific answer.

Assemblywoman Kirkpatrick:
The only reason I ask is that there are a lot of businesses, and in my mind that would be considered a business, but I do not know within statute if it is considered a business. They have that extra piece where, if the income of the business is down, they can write off a different portion of the property tax. If we could look at that it would be helpful for me.

Kevin Powers:
Of course. I want to emphasize too that none of that will affect the net proceeds tax. The net proceeds tax would still be applied in the same way.

Going to your second question, with regard to the distribution of the revenue from the net proceeds tax, Article 10, section 5, includes a provision in the *Nevada Constitution* where a portion of the net proceeds tax equal to the current tax ad valorem rate applied by the local governments goes to the local governments. Of the money that is collected in the net proceeds tax, the state controller calculates the amount that would go to the local governments using their existing ad valorem tax rate, and that is in the *Nevada Constitution*. It is also in statute, so if you repeal that provision from the *Nevada Constitution*, the statutory provision still exists. If the Legislature does nothing with NRS Chapter 362, the current appropriation of money to the local governments from the current net proceeds tax will remain the same. Of course, once you take it from the *Nevada Constitution,* it would be up for the Legislature in future sessions to determine if they wanted to adjust that. They would not be obligated to adjust it, but they would have that power.

Assemblyman Stewart:
I do not mind asking you the hard questions. You seem to be a fountain of knowledge.

If the assessor goes to assess a mine, he assesses it, minus the value of the mineral in the mine, just on the property itself. If it is five acres of a mine that is producing $10 million per year, and another mine on five acres in the same county is not producing anything, are they both assessed the same?

Kevin Powers:
Because there is no current formula in place for assessing mines and mining claims that formula would have to be developed by the State Board of Equalization and it would then have to be followed by all the county assessors. They would have to come up with a formula for determining the value of a mine or mining claim, and they would have to make a distinction between operating a productive mine versus nonoperation of an unproductive mining claim. The State Board of Equalization would have to come up with a formula to apply so that the county assessors would know how to assess the different types of mining property, some of which is productive and some of which is not. I cannot say conclusively that the formula would expressly exclude the value of the mineral under the land.

Assemblyman Stewart:
So we have no precedent, no background to go on. Would we just be developing it as we went along?

Kevin Powers:
That is correct. Other states use real property taxes on mines and mining claims. I believe our tax officials could look to those other states to determine how they assess mines and mining claims under a real property tax.

Assemblywoman Kirkpatrick:
So there is a $600 million thing in the building right out of the gate after November 4. Based on what you have been saying, I do not see where that comes into play. The assessor would need to have time to put those requirements in place—also based on what you said. We would somehow have to fund the entities where the funds go now based on if the real property tax then becomes assessed like everybody else with 35 percent value, as opposed to what is done today. I do not see the additional revenue until all of those things have been resolved. Is that a fair statement?

Kevin Powers:
That is a fair statement with regard to the real property tax component. It would take some time before the revenue was collected, because the assessors would need to have a formula in place, assess the property, issue the tax notices, and then, obviously, the tax would have to be collected in the ordinary course of business. But, again, nothing would change with regard to the existing net proceeds tax. The only increase in revenue, if no statutes are changed, would come from the increase from the real property tax on mines and mining claims, which is not collected now.

Assemblywoman Neal:
I wanted to follow up on Assemblyman Stewart's question. You said that an assessor would have to go back out, but there is no precedent dealing with an unproductive mine or productive mine. Is that what you said?

Kevin Powers:
There is no precedent in this state, but there is precedent in other states for assessing mines and mining claims. Other states do assess mines and mining claims as real property. In this state, however, mines and mining claims have been exempted from real property tax since 1864, when the *Nevada Constitution* was adopted. There was only a brief period, from 1863 to 1864, when this state actually put real property tax on mining claims.

Assemblywoman Neal:
That is why I was confused. There was an 1867 Nevada Supreme Court case [*State of Nevada v. Eastabrook*, 3 Nev. 173, 180 (1867)] that dealt with the issue of unproductive versus productive mines. Would that play into this discussion?

Kevin Powers:
In that case, the Nevada Supreme Court was interpreting the *Nevada Constitution* as it existed at that time. The *Nevada Constitution*, at that time, said that all property shall be assessed property tax except mines and mining claims, "the proceeds alone of which shall be...taxed." So, in that case, the Nevada Supreme Court was just determining how you tax the proceeds from a mining operation. Those proceeds were personal property, and they were subject to the personal property tax rate, like all other personal property. That is not what S.J.R. 15 of the 76th Session does. It does not take the state back to where the *Nevada Constitution* was in 1864, because the *Constitution* then had limitations. Senate Joint Resolution 15 of the 76th Session removes all limitations, so it restores the power of the Legislature to determine how to best tax mines.

In the case you are referring to, the Nevada Supreme Court was interpreting that limitation in the *Nevada Constitution*. That limitation will not be in place if S.J.R. 15 of the 76th Session is passed.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Mr. Powers is legal counsel for the LCB, and is nonpartisan, so he will return to the dais to serve as legal counsel and to answer any legal questions that the Committee members need to ask.

We are now going to transition to opposition. If you are in opposition to S.J.R. 15 of the 76th Session I am going to have you come first. I have asked those in opposition to coordinate, to make sure they have different representatives testify. We are under certain time constraints, so we will respect that, and make sure we try to get in as many people as we can. I would like Tim Crowley, Jim Wadhams, Dana Bennett, and Mr. Brown to come to the table.

If you do not get to verbally testify today I will also be taking written testimony up until 5 p.m. tomorrow. I will include it in the public record. You can submit it to the Assembly Taxation Committee.

Tim Crowley, President, Nevada Mining Association:
I am here in opposition to S.J.R. 15 of the 76th Session. It is a measure that dismantles the current system that provides significant resources to the state, and the system that provides significant resources to the counties in which mining exists. In fact, there are net proceeds revenues in all counties throughout the state of Nevada, except Carson City. It provides predictability to the mining companies on a tax regime. Removing the net proceeds tax will have the opposite impact. It will halt revenue to the state. It will create uncertainty about county revenues. It will create uncertainty about taxes to the industry going forward. The best course of action, in our opinion, is not to pass this measure.

If you are inclined to pass it, we would ask that you answer some very tough questions, and get the answers to what the impact would be to the state. What would the impact be to the counties, to the rural hospitals, the school districts, the court systems, and the assessors who do not collect the net proceeds tax now? How will they assess this? Will they assess our property as they do today on 100 percent of value, or 35 percent of value going forward?

Answer the questions about taxes to the industry. What will the rules be on our industry going forward, both to the operators and to the claim holders?

Senate Joint Resolution 15 of the 76th Session was introduced two years ago on a false premise. The premise was that mining is protected from taxation. That is absolutely false. We are not protected from paying sales taxes. We are not protected from paying property taxes or payroll taxes. Like all businesses in the state of Nevada we pay those taxes. We are not protected from paying additional taxes that you might decide to enact going forward, should it be a margins tax, should you take Steve Wynn's advice and pass a gross receipts tax, or whatever it may be. As long as it is not a property tax competing with the existing property tax you can tax us in additional ways. Today, through general business taxes, we pay $170 million. That is the payroll tax, the property tax, and the sales taxes combined. Net proceeds are not a small increment on top of it. It creates an additional $250 million on top of the $170 million we already pay. That is $250 million that dwarfs the generally imposed taxes. If we were manufacturing shoes, instead of raw materials, we would pay $170 million to the state and local governments, but instead we pay over $400 million.

Mining is the only payer of a state property tax, the state portion of the net proceeds of minerals tax, and we maintain that portion would go away with the repeal of the net proceeds tax.

Mining is a high-risk business. It takes huge capital to start a mine. It takes a very long timeline to get from the point of discovery to the point of processing a mineral. Sometimes it is around 15 years and a billion dollars through that timeline before you generate one penny of revenue. When you get to the end of the timeline you do not always know what the value of your mineral is going to be. You certainly did not know at the start of that timeline.

Just look at the value of gold right now. It has dropped 15 percent since the start of this legislative session. It has had a little bit of a recovery, but had another fall yesterday. It is at times volatile.

Because of the incredible capital, the long timeline, and the fluctuation in the value of what we produce, we need as much certainty about our business as possible. That includes certainty about the taxes we owe and the revenues that are going to the communities in which we live. There have been many misstatements and much misinformation about this issue, the passage or consideration of S.J.R. 15 of the 76th Session. To the extent that these false notions motivate the desire to pass S.J.R. 15 of the 76th Session I would like to set the record straight.

Some say we do not pay our fair share of taxes. In a lot of ways that is true. We pay more than our fair share of our taxes. We pay four times the taxes of an average business in the state of Nevada on a per employee basis. We pay twice as much taxes as our economic footprint. In other words, we represent 4 percent of the state's economy, yet 8 percent of every dollar that goes into the State General Fund comes from the Nevada mining industry.

Some say that Nevada is too mining friendly and should be taxed like surrounding states. A hard rock mine in Nevada has a higher tax overhead than similarly sized mines in New Mexico, Arizona, Alaska, Wyoming, and Idaho. California, Colorado, and Utah do have greater tax burdens on their mines, but it is not significant.

Some say that we are the only industry singled out in the *Nevada Constitution*. That is wrong again. Just read the *Nevada Constitution*, as I know you have. Warehousing, securities, and others are mentioned in the *Nevada Constitution*. Lately I have been hearing a lot about how mining is the same size as the gaming industry, and thus should pay the same amount of taxes. That is far from the truth. I just mentioned we are 4.4 percent of the state's gross domestic product (GDP), yet we pay 8 percent of every dollar going into the General Fund. Gaming is roughly 30 percent of the state's GDP. They pay roughly half of all the dollars that go into the State General Fund. Both industries pay a significantly disproportionate amount of taxes to the State of Nevada.

Mining is proud to be an important part of this economy. We have been here since the founding of the state, and we have a very bright future ahead of us. There are new gold projects coming on line. There are new molybdenum projects coming on line: lithium, vanadium, copper, and geothermal.

There is a lot of growth in the mining industry. With this growth comes the creation of some of the best jobs in the state of Nevada. We are paying on average $90,000 per employee, with benefits. That is twice the state average salary. We are also proud to be consistent in working with you to solve and address the budget needs of this state. We helped last session when the state was upside down. We reviewed the net proceeds of minerals tax, and from that point on we have been paying $48 million per biennium more in net proceeds taxes. We worked with you in 2010, during the special session, to increase fees on the industry. We worked with you in 2009 to prepay our net proceeds of minerals tax, something that we are still doing today. We worked with you in 2003 to pass a broad-based business tax. Incidentally, as 1 percent of the state's workforce, we are the fourth largest payroll taxpayer in the state of Nevada. The payroll tax originated in 2003. We will work with you

in 2013, right now, to develop broad-based business taxes, if that is the decision of this legislative body and the Governor.

The best option for you is to reject S.J.R. 15 of the 76th Session. It was introduced on the false premise that we are protected from taxation; we are not. In reality it adds another $250 million of taxes to the State General Fund and to local communities. If it is not your inclination to reject S.J.R. 15 of the 76th Session, determine the impact. Determine how it will fiscally and administratively impact the state, the counties in which our employees live, and the industry itself, including the exploration world. Establish the rules by which we will have to play, going forward before you dismantle this system that works so well.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

James L. Wadhams, representing the Nevada Mining Association and Newmont Mining Corporation:
Newmont has been active in Nevada since 1962. It survived through the difficult times of the early 2000s, when the price of gold dropped into the $200 range. Newmont is an American company, founded in 1921, with their North American headquarters in Elko, Nevada. It is a publicly traded company and it employs nearly 4,000 Nevada residents in high-paying jobs.

I am going to try to avoid repeating anything that Mr. Crowley said, however I think he must have anticipated what I was going to say, so if I have a couple of overlaps, I apologize in advance.

It is time for some Nevada straight talk. This is a very serious issue, and I especially appreciate the rigor of the questions that this Committee is willing to consider—the facts, the law, and especially the consequences. I hope today to provide you with some additional information that you will find useful in your deliberations as you begin to consider what the consequences of this action might be.

I do appear in opposition, along with Mr. Crowley. Things have changed. Senate Joint Resolution 15 of the 76th Session creates uncertainty, and it is unfortunately a domino progression of uncertainty. The uncertainty begins in the business itself. As Mr. Crowley mentioned, the normal business uncertainties of this activity include a drop in the price of gold, the rising cost of production, and the cost of extraction. However, facing federal legislation, the ballot initiative on the margins tax, the potential passage of this resolution,

and the discussion with this body, and particularly the other house, of certain ballot initiatives add to the uncertainty of the tax status that we face. That uncertainty then trickles down from us to the counties in which we do business, where the revenues are spread throughout the state.

We think this resolution is not only a bad idea, it is bad policy. It will have a dramatic impact on this segment of Nevada's economy, and ultimately the entire state. If it does nothing else, it will inject uncertainty for investors, and that will tend to stop exploration and development. Shortly following that will be production and jobs. If it does what it purports to do and reverses the 1989 tax increase, it will put mining back into the *Nevada Constitution*, with the minerals being taxed at the county rate. We have heard many opinions expressed in and from the media about mining, and indeed everyone has a right to those opinions. We respect that. But what is the issue here? The issue is the value of the dirt, or perhaps what is in it. It is not about payroll. It is not about the profitability or anything else. All of that could be dealt with independently. It is about the value of that dirt. Currently, mining companies have to crush and process nearly 12 tons of dirt to get 1 ounce of gold. Twelve tons for those of us from southern Nevada is about the amount of dirt that is taken out of our backyard to build a swimming pool, to get one ounce of gold. Now how much would somebody pay for that 12 tons of dirt? Some would say they would pay $1,600. Hardly, a buyer would consider the cost of extraction, the possible prices they might get in the future and, as Mr. Crowley pointed out, that is sometimes 10 or 15 years into the future. We are talking about how you value that property.

People say that mining wrote the *Nevada Constitution*, yet if mining wrote it, why was there a decision to include that property as taxable at all. People say that mining is the only industry in the *Nevada Constitution*, but as Mr. Crowley pointed out, if you read Article 10, you can see very clearly that there are three other industries that are not only specifically identified, but the types of property that they hold are not just protected, they are exempted. I am raising no issue with those exemptions. They were passed by the people, and I think on sound purpose; however people do say that we are the only one and that is not true.

People say that mining is wildly profitable, but none of these critics have pointed to a current financial analysis that evaluates the profit margins, much less even looks at the current stock prices, and this is not a difficult analysis, because the two major companies in this industry are publicly traded. People say mining is not paying its fair share, and to follow Mr. Crowley, they are saying that because it is protected, and yet it pays the payroll tax. Is there a suggestion that we are actually exempt from the payroll tax and can request

that return? I do not think so. We do not have a profits tax, but we might have a margins tax. Mining would be fully exposed to those issues. We would have paid the gross receipts tax in Assembly Bill No. 582 of the 76th Session. Ironically, the language that people say protects mining was adopted to make mining pay a higher property tax rate than anyone else.

In 1989 the Legislature passed Senate Joint Resolution 22 of the 64th Session, and to try to do this briefly, I have placed a copy of S.J.R. 22 of the 64th Session on the screen (Exhibit D). Subsection 5, the underlined words, is the exact language that S.J.R. 15 of the 76th Session would repeal, the language that S.J.R. 22 of the 64th Session put into the *Nevada Constitution*.

If we scroll down just a bit you will see the Secretary of State, who in that period of time was responsible for creating the argument for passage, stated in basically one sentence, "This proposal would allow the Legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes." Are you prepared to repeal that increase?

People say it is time to take mining out of the *Nevada Constitution*, and then we can tax them like everyone else. I am repeating now what has been said a couple of times, that if they would read Article 10 of our *Nevada Constitution*, which is not very long and is not very complicated, states very specifically that all property—real, personal, and possessory—is subject to the uniform and equal clause and just valuation. As was referenced earlier, the *Nevada Constitution* is not empowerment but a constraint, and that constraint is expressed very clearly in that section.

A single sentence is often forgotten by our critics, which the *Nevada Constitution* provides in Article 10, section 2. It is very simple, "The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation." That apparently is an obsolete way of saying 5 percent, so all of our property is protected and capped at 5 percent. As Assemblywoman Kirkpatrick mentioned earlier, there is a statutory cap within the constitutional cap of $3.64, or perhaps if you add the 2 pennies, $3.66, but nonetheless the ultimate fog line for this Legislature and its power is 5 percent.

Interestingly, on this very issue, one of Nevada's nonprofit organizations weighed in on a recent court case [(Exhibit E), page 19]. I think the second sentence is particularly compelling: "Clearly the plain meaning of Article 10, Section 1(1) is to exclude mines from the same uniform and equal assessment as other real property in the state." The question is, what does it

mean to eliminate the Legislature's right to tax mines differently? If you remove "to tax them differently," will you not have to tax them the same?

Some people have said that mining should be the sacrificial lamb to soothe education, but no one has analyzed what kind of education budget could possibly be built on a commodity price. Indeed Gary Peck, like his predecessor 25 years ago—a lady whom I knew personally because I was here 25 years ago—does not want teachers' salaries pegged to the commodity price of gold. The problem is not just what people say, it is that it is repeated so frequently that the underlying facts and the law are often forgotten. Wrong information does not become true simply because it is repeated loudly or frequently. This body makes the policy. We respect that and we encourage you to do it on this issue. Take the time to get the facts and review the law before you make that policy. I have yet to meet a legislator who was happy that they voted for a bill that later produced unintended consequences. Assemblywoman Kirkpatrick actually cut her teeth on resolving some unintended consequences of a bill that had been passed in a prior session.

We simply ask that the Legislature and the Governor request the respected fiscal analyst to estimate not only the effect of any tax changes, but also the capacity of that class of taxpayers to absorb the tax increase and the point at which the tax reduces the activity, rather than increases the revenue. In reference to a $600 million tax increase, I suggest it should be more carefully analyzed. That type of proposal may actually generate less revenue than the current method of taxation—less, not more.

There has been no hard analysis done of this for the Economic Forum, which just concluded yesterday. Maybe at some point in time that will be done. They ultimately have to determine what their estimates are for these revenue forecasts. At the same time, we are offering tax incentives to attract new employers, we seem to want to subject those employers that actually have added jobs to higher taxes. There is an inconsistency. This resolution before you is tax policy, and should not be done just for political convenience.

I have also included a series of documents that I think are important in this discussion (Exhibit E): The first one is the 2011 vote on S.J.R. 15 of the 76th Session. As you will note it passed both houses, but did not obtain a two-thirds majority vote. There is the text of ballot Question No. 1 [May 2, 1989, Special Election], which I referenced earlier, that resulted from S.J.R. 22 of the 64th Session. There is the text of S.J.R. 15 of the 76th Session from this session, which you already have. There is a section of the *Nevada Constitution*, Article 10, which I have referenced.

I have also included several decisions of the Nevada Supreme Court. This is sort of a follow-up to a question, and in no way am I disputing the analysis that was done by Mr. Powers. He is very competent counsel. I would mention that there are a couple of cases, one in 1914 and a more recent one in 1951, that identify the net proceeds tax as a tax on the ad valorem value of the property. We have cases as recent as *Sun City Summerlin Community Association v. State Department of Taxation* [113 Nev. 835, 838, 842-43, 944 P.2d 234 (1997)] and *List v. Whisler* [99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983)] that all identify the methods that the state must use.

I will conclude by saying that one of the fascinating issues in this whole discussion is the frequent confusion of the method of valuation of property. If one looks at *Nevada Revised Statutes* 361.227, the method of valuation is identified based upon what would typically be applied to commercial property. It is generally called the capitalized income approach. To raise an example by parallel, if you have two 7-Eleven stores, one on a high traffic corner with substantial sales and an identically constructed 7-Eleven in a remote area, they will not be valued by the assessor the same way, because their capitalized income will be different. An investor will pay more for the high-traffic store than for the low-traffic store.

There are a lot of ways that this creates uncertainty. The assessors will have to decide how to value the new property coming on the rolls and the old property going off of the rolls. We would suggest to you that you take the time and carefully consider the fiscal and economic impacts of this.

Chairwoman Bustamante Adams:
Thank you Mr. Wadhams. I think both you and Mr. Crowley did an excellent job in representing all your stakeholders that are in opposition.

Assemblywoman Neal:
I thought about this. I really did. I started thinking the argument that was presented was if you remove them from being taxed differently, then will they not be taxed the same? So I thought about this for more than one day. I started examining the historical arguments and examined the case law that was provided by Mr. Wadhams, because I wanted to see what was out there.

So, if we find ourselves in an open space, if S.J.R. 15 of the 76th Session passes, then we find ourselves relying on not only the historical context, but also case law. What seemed unique to me in a couple of the cases was that in the court's discussion they were talking about the entire proceeds of mines, that the ad valorem should be applied to the entire proceeds of mines. So I asked myself what that meant. I had to go back to 1906 when the word

"net" was added in, and I then wondered what the difference was between "gross" and "net." I then looked to the constitutional debate. What I found was interesting. There was significant debate over several days that said the Legislature should tax everything which proceeds or animates from the mine that is valuable. I then asked myself if we were doing that. Are we taxing everything the mine produces?

I want to know how we have treated it in statute. If the Nevada Supreme Court said it should be the entire proceeds of the mines and the products that are produced, then we need to ask if they are actually doing that. To me, the open space we find ourselves in is the ability to define and look at the historical debate, decide what we feel is the actual truth that was established in 1864, and then see what was established in 1912, in terms of the entire proceeds. I want that discussion to be had. Why do we not just delete "net"? Why do we not talk about the entire proceeds, the waste rock and everything that comes from it that gives value?

That was more of a commentary, with somewhat of a hypothetical phrasing, but I want to have that discussion. The Legislature should tax everything which proceeds or animates from the mine that is valuable.

James Wadhams:
I just want to say hear, hear. We think that discussion is very important and we appreciate that question. We would be happy to participate with any and all people in developing that answer. You are currently taxing the entire value of the mineral itself. The point is you could be taxing the income of this corporation if you had a business income tax. You could be taxing its gross receipts, if we had a gross receipts tax. You could be taxing its margin as a business. Article 10 limits the Legislature only to the taxation of the property value. Business activity is not constrained by Article 10. We think that discussion is an important one to have.

Assemblywoman Neal:
I appreciate your answer and look forward to some level of debate.

I asked another question when we met. I listened to the statements. I listened to several different companies. I wondered what is different about what is being stated. How do you differ in your argument? I heard the certainty argument and I understand it, but at the same time I had to then ask the question, based on everything that was presented, how have you managed over the 100-plus years to maintain your longevity, knowing that there is a reciprocal relationship between recession and times when we are doing well? There must be a constant in that business. There is a constant growth, because nothing

lasts that long without having something very certain about it, being able to stand all of these changes that have been cited. Talk to me about that.

Tim Crowley:
We do not function in a dissimilar way than other businesses. When there is an increase in overhead on that business, changes have to occur. The changes that occur in the mining business are that we have to focus, we have to constrict, and we have to limit investment. Should the price of gold continue to fall, there will be changes that will limit investments in the future and that will cause these companies to focus only on those ore bodies that are profitable to mine. That ore body grows and shrinks with the price of all of the overhead on that mine, including the price of gold and the price of consumables like diesel, rubber, and steel for our trucks. It is a constant readjustment. It is a daily adjustment of how you work to maintain a profit. We will not work at a loss. No business will, or at least not for too long. If that overhead is a tax increase, there is still a reaction to that. The simplest answer is that we have to turn to and limit ourselves to ore bodies that are profitable to us.

Assemblywoman Benitez-Thompson:
I was thinking about what Mr. Wadhams said, with his cautionary tale about being careful. Even the best of us, specifically Assemblywoman Kirkpatrick in her first session, have produced policy with these big unintended consequences. Shame on us legislators for sometimes making errors and mistakes. I want to make sure you know I heard that.

I want to get back to thinking thoughtfully about this process. As I read NRS Chapter 361 and look through the established process that is there, I see it is pretty well laid out. I am trying to get an idea if this did pass and the public supported it, what type of time frame we are looking at for creating a mechanism by which the Board of Equalization and county assessors can come up with a valid tax bill for you folks.

As I look through it, and the way we are talking, I do not want the rhetoric to be left that we are going to have these bumbling county assessors going, "Oh my gosh, how am I going to figure out how much this land costs? Golly gee whiz, I have never done this before," when we have tons of information here in NRS Chapter 361 that is going to give us guidance. I want to get a better idea for a better projection of time, without too many red flags that this will take forever. We are never going to be able to figure this out; we do not have the wherewithal in Nevada to possibly ever solve this problem.

James Wadhams:
I would like to intercept that question. First of all, I was complimenting Assemblywoman Kirkpatrick. She fixed unintended consequences caused by somebody else. She was not the cause of them.

Chairwoman Bustamante Adams:
I appreciate that correction on the record.

James Wadhams:
I apologize. I think rather than ask the taxpayers what the timeline would be, I think we have some county assessors here who are very competent. I know we have the Department of Taxation, and they may be able to answer that question much better than we would.

Chairwoman Bustamante Adams:
I will have the Department of Taxation come up under the neutral position to answer questions regarding that roll.

We have only a few minutes left under opposition. I appreciate Mr. Crowley and Mr. Wadhams for representing your industry. I want to make sure we hear from the rural counties as well. There is a gentleman up in Elko that is at the table. I want to give Assemblyman Ellison an opportunity to testify, if you could come to the table. I would also like Mr. Garza from White Pine to come to the table. Dana, you can stay there.

Michael J. Brown, Vice President, Corporate and External Affairs, North America, Barrick Gold Corporation:
This is a different title than I have had in the previous nine sessions I have been here. I was actually in this room, in the last session, when I realized that there were higher expectations of the mining industry and the mining companies in Nevada. I went back to Barrick and convinced them that we needed to expand our commitment to corporate social responsibility in Nevada.

We created a new corporate social responsibility team, hired one of the best experts in the world on this, and launched a series of initiatives to expand our economic and vendor base in the state, to hire more Nevadans, to train more Nevadans, to increase our engagement with the Western Shoshone, and to establish a new partnership program with groups like communities and schools; not just to address the symptoms of problems in Nevada, but also to try to address the actual cause of those problems. There was a deeper commitment across all Nevada—north, south, and rural—to deal with the issues in higher education and public education, because, after all, this is our twenty-seventh

year in the state of Nevada, and we are pleased to be here. I have 4,087 employees in the state.

I spend more time in Nevada than I do in Washington, D.C., where I am actually a rower. I enjoy rowing very much. A few weeks ago I had Mary Whipple, the gold medal-winning rower from the U.S. Olympics in London, to Las Vegas to do an event at the Springs Preserve for a group of kids from communities and schools. Mary Whipple's job in rowing is to steer the boat. She is the coxswain. Rowing is the only sport where we actually face backwards as you go, and I sit in the bow. So, should we hit a bridge, I will absorb all the kinetic energy first when we hit that bridge.

I kind of feel when we get into this issue that I am out in this open space without a coxswain and I am not sure where we are going.

I want to talk about tax policy in a broader sense and how mining companies deal with this, some of the ideas that the World Bank, International Monetary Fund, and others have put forward. Tax policy is hard. President Warren G. Harding, back in the '20s, said he wished he had a book where he could look up the answers. He added that even if he had that book, he was not sure he would understand it.

In Nevada we have struggled with the issues of how to establish taxation since Bert Goldwater chaired a committee in 1960 [Citizens Committee on Taxation and Fiscal Affairs]. David Schwartz, in a superb article in 2009, said Nevada still has a tax system not by design, but by default [David McGrath Schwartz, "A tax system by default, not by plan," *Las Vegas Sun*, Jan. 25, 2009].

As a former house page in the Ohio House of Representatives I tend to go back to my experience there when I am looking for guidance. Tax structures are born out of the political and economic life of a state over time. It is really not possible to wipe the slate clean and prescribe some new structure to meet some theoretical or desirable effect. Rather, it is necessary to review the existing structure, in light of generally desirable standards, arriving at some modifications that are within the realm of possibility.

Last session, and I congratulate this Committee and the Chair last session, now Speaker Kirkpatrick, because we did have the financial folks from the mining companies sit and we walked through all the deductions. Eventually legislation was enacted that removed a series of deductions and produced a new revenue boost of $48 million for the state. I thought that might bring resolution to the issue; it clearly did not.

Industry-specific taxes, like a minerals tax, are exactly that. They are specific to an industry. States like Nevada that are dependent on industry-specific taxation are, in fact, partners with those industries. As partners there is an obligation and need to help educate policymakers on current trends in that industry. The mining industry is a multibillion dollar global business. You cannot build a mine without raising billions of dollars on global capital markets. It is a very unique industry, and as we make investment decisions we have to look at things like ore grade, infrastructure, reserves, political stability, social factors, and fiscal regimes.

Generally speaking there are no gold nuggets, bars, or even visible veins of gold to be found in Nevada. There is no sage grouse sitting on top of a gold bar somewhere. The gold is microscopic and disseminated in solid rock, at great depths, and often underneath the water table. It is not like mining coal, where one mine is a continuous seam of coal yielding a marketable product at the end. Absent the billions of dollars of world-class processing, technologies, and facilities built in Nevada, that gold would remain unrecoverable, and really of no value to the state. The modern gold industry, as we understand it today, dates back to 1985. We have had three phases of that industry. From 1985 to 1995 the gold was largely reasonably close to the surface. You had to remove about 100 tons of material. It was pretty simple processing. In about 1995 that started to change. We had to build deeper mines, more underground mines, but more importantly the only way to extract that microscopic gold from the rock was to build large processing facilities and invest billions of dollars in roasters and autoclaves.

What I think is important as partners of this industry is we are projecting that, if you look beyond 2015, at that third generation of gold mines, the ore is going to be deeper, it is going to be more complicated to process, and we have to figure out how to get the billion-dollar facility we built for the old mine to the new mine. It is generally a very different industry.

After the fall of the Berlin Wall and new markets opened up, the International Monetary Fund (IMF), the World Bank, the International Council on Mining and Metals, consulting firms like Ernst & Young, and others started to produce a lot of research on what mineral taxes should look like. Nevada is actually getting it right in many of these areas. We are not manufacturers. It is not an alchemy factory where we have a shiny gold bar coming out of one end. A mine is a depleting asset. We continually have to rebuild the mine, after we produce the gold bar, which would be like rebuilding a factory. They have very long gestation periods. We are looking at ten-year permitting cycles in some cases, so no revenue is produced. The state starts to get sales taxes when we

start to build the mine, eventually you get net proceeds taxes when we actually start to make money as the mine comes into operation.

Chairwoman Bustamante Adams:
I want to be able to hear from the person in Elko so I will need you to wrap it up.

Michael Brown:
When we look at the IMF and how they have recommended countries to tax mining, they generally suggest that that tax system be based on some kind of a net concept, that there be a cooperative effort between government and the mining companies to develop those systems, and that they create a balance. I am a great fan of Elliot Richardson, who wrote a book called *The Creative Balance*. Do you want long-term sustainability in your rural counties or do you want short-term gains? Right now we have had a sustainable industry in rural Nevada for 30 years, and I hope that however we end this process we get there. I am not sure where we are going, and that is why I am very concerned about S.J.R. 15 of the 76th Session, because I am not sure what is on the other side. With that, I have submitted the whole thing for the record [(Exhibit F) and (Exhibit G)]. Thank you.

Chairwoman Bustamante Adams:
We will now go to Elko.

Richard Perry, Councilman, City Council, City of Elko:
I have been chosen to testify today on behalf of the Council. Our council spent time analyzing and discussing S.J.R. 15 of the 76th Session at our last public meeting, took public comment, and produced the letter outlining our position (Exhibit H), which we sent on Monday to each of you.

I just want to add a few things and outline some high points, and not repeat all that is in that letter.

The City of Elko is opposed to S.J.R. 15 of the 76th Session. We believe that the mining and natural resource industries are highly capital-intensive international businesses. For most of Nevada's history it has been rated as one of the top ten international locations for natural resource exploration and production. This rating is not just based on geology, but on political and tax stability. Although third world countries often have better geology, their lack of a stable tax structure often places them low on the list for natural resource investment. As such, we object to any effort to dismantle the steady form of tax revenue to our local communities and to the State of Nevada.

The City of Elko receives little from net proceeds of mines tax, but our General Fund in 2012 and 2013 was 65 percent funded from Consolidated Tax (CTX) Distribution revenues. The year-to-date largest contributor to CTX revenues in Elko County is industrial and business sales, which is largely from equipment sales to the natural resource industries. The current discussion of changing the way mines are taxed may already be having a negative impact on capital investment, which will negatively impact our CTX revenues for the City of Elko and Elko County. Our county CTX revenues, as they are recorded here for the first quarter of 2013, are in a relatively steep decline right now. That has us all somewhat worried. That may in part be the price of gold and it may be in part the discussion that is taking place right now.

Our state needs capital investment by private industry to create jobs that pay well and a healthy tax base. The current formula for the net proceeds of minerals (NPOM) tax has created just that, supplying a reliable source of revenue to both state and local rural governments. With the current NPOM tax most rural counties are net exporters of tax revenue to the state, and the jobs created feed families, provide health and retirement benefits, fund our rural schools, pay court and social costs, and build and maintain the infrastructure that we have here in rural Nevada. These living-wage jobs benefit not just mining families in the rural counties, but thousands of Nevada citizens employed in mining support industries in other parts of the state.

Senate Joint Resolution 15 of the 76th Session does not outline the rules for taxing mining and other natural resource industries. It raises more questions than it answers, and is a great uncertainty to rural counties and cities. On paper it could cause a $100 million reduction in revenues to the state and $70 million to rural counties. The City of Elko is currently preparing its 2013-2014 budget. Our budget is largely dependent on what happens at the Legislature and the health of our local industries. What should we assume?

Therefore, before considering this legislation, we ask that the following questions be answered:

- What will the fiscal impact be to the rural mining counties with these changes, in the short and long term?
- The net proceeds of mines applies to mining, oil, gas, and geothermal. Oil and geothermal are potential growth industries in Nevada. Elko County will see its first two oil exploration wells with new tracking technology this summer. Those are the first in the state of Nevada. A change in the tax structure could scare these people away, and that could be a long-term advantage to this state in more revenues if they are

successful. Will this proposed constitutional change affect all of these natural resource industries?

- What will the distribution rate be? Currently less than half of the NPOM tax goes to county governments, and a little over half to the state.
- Will mining taxes change from being centrally assessed to locally assessed? I believe Mr. Powers answered part of that question, and it was one that concerned me. As someone who has worked in the mining industry in the past, I strongly believe that the valuation of mineral claims and properties is a highly technical business, and I do not know of any county assessors who have degrees in mining or metallurgical engineering that might have the skills to take that on.
- Will there be state resources available to assist with implementation, and as such is this an unfunded mandate on local governments?

While we believe that all Nevada industries should do their part, legislation as it so drastically affects revenues to our state and local governments, should be carefully reviewed and analyzed to avoid unintended consequences. Senate Joint Resolution 15 of the 76th Session appears to us to be very problematic and may cause significant economic hardship to rural mining counties and the state of Nevada. It also creates investment uncertainty in our natural resource industries, one of the few bright spots in our state economy, and the primary source of employment in Elko County. Therefore, the City of Elko cannot support S.J.R. 15 of the 76th Session.

Thank you for listening and thank you for your time in representing the citizens of the great state of Nevada.

Chairwoman Bustamante Adams:
I want to say thank you for representing the group there and for your patience. We did receive your letter. Assemblywoman Kirkpatrick has a question for you.

Assemblywoman Kirkpatrick:
Based on what you just said, can you tell me where the $100 million shortfall would come from?

Richard Perry:
That is a number that I picked up on an analysis that I received from the Nevada Mining Association on the possible difference in property tax revenues versus NPOM tax. The $70 million is the component that would impact the counties that currently receive net proceeds tax. I can produce that and send it to you, if you would like.

Assemblywoman Kirkpatrick:
That would be helpful, because I believe that the question was answered. Property tax is in addition to the net proceeds tax. I heard today, and I do not know if it true or not, that mining also gets an exemption on some sales tax stuff. You mentioned CTX, and CTX is derived of all the sales tax, so was that also in your calculations?

Richard Perry:
That was not in that calculation. The sales taxes were completely separate. My point in bringing up CTX was that Elko County receives very little NPOM tax; however, it is a major hub for sales of industrial equipment. I believe that the two go together. As the profitability of the industry increases, they expand and we see those sales tax revenues. That is what we largely live on here. As I mentioned, our city general fund, from which we provide services, is 65 percent based on CTX revenues, and those can vary wildly.

Assemblywoman Kirkpatrick:
It would be most helpful if you could send that to Assemblyman Ellison or me sometime today.

Chairwoman Bustamante Adams:
We have our last three people at the witness table, and then we are going to transition. I think the people who have gone before you have done an excellent job of helping the Committee to understand the issues, both in the rural areas and the impacts, so do not feel obligated to go too long.

Assemblyman John Ellison, Assembly District No. 33:
I think they have done a great job explaining what could happen in the future to Nevada, not just rural Nevada, but the whole state.

There are a lot of people who traveled to Elko and here today. We have White Pine, Humboldt, and Lander Counties, and some people from Elko. Could I get them to stand and be recognized. They have traveled a long way to be here to speak today, and I know that with our time that is not going to happen.

Chairwoman Bustamante Adams:
Those who are in opposition to S.J.R. 15 of the 76th Session please stand. I appreciate you traveling here to participate in the legislative process.

Assemblyman Ellison:
We have heard the stories out there, that mining is not going to go away no matter what. I can tell you that fear of the future in mining has already taken its toll. We have all seen the letter, just recently, that says with the price of

gold right now, and possibly with S.J.R. 15 of the 76th Session, the toll on this will definitely impact employment.

I just left a hearing on Senate Joint Resolution 14, which my colleague from Lyon County was down speaking on. That hearing in the Assembly Committee on Natural Resources, Agriculture, and Mining talked about a copper mine that would create up to 900 new jobs. With that, the biggest fear is the uncertainty of what is going to happen with this field. This is a new mine that is just getting ready to start. With high unemployment in that area, that could have a major toll on the future of that county.

There are about 25,000 employees working in mining in Nevada right now. If we looked at the total numbers from 2011 and 2012, Nevada has increased employment by 31,000. How many of them have been employed in the mining sector? That is what I would like to know and what I am hoping Mr. Brown might be able to address.

The national average of growth is 1.6 percent. Nevada has jumped to 3.3 percent in growth. We were one of the worst but have come up dramatically. I believe that had a lot to do with mining.

An analysis within mining figures that the taxes paid to Nevada per employee, based on revenues, are about $50,000. There is not one industry in this state that comes close to that. This is why it is so important to keep this industry alive. The uncertainty of what is going on out there could be devastating. We do not know what is going to happen to the NPOM tax going to the cities. Right now the state is being subsidized by the rural counties in education. Even though the Governor has increased education by about $400 million, we still have a long way to go. This is not the answer.

I received an email that said for the last 25 years there has been a lot of talk in Nevada about broad-based economic diversity and our economy in gaming and tourism, but little has been accomplished. By most measures, our economy is less diverse than it was a quarter of a century ago. We have had only limited success in attracting other industries to our state. Mining is a shining exception to the rule. Thanks to mining many of our rural counties have prospered in the recent recession. Unemployment in rural counties has remained well below the state average, helping our entire state. When gaming and construction were laying off tens of thousands of employees, mining was hiring. I hope we take this into consideration. I would really ask for the support of this Committee to not support S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Thank you, Assemblyman Ellison, and if you have written testimony we will take it for the record. I do have a question from Assemblyman Horne.

Assemblyman Horne:
Assemblyman Ellison, I just wanted to get some clarification. I heard you say that the state is being subsidized for education by the rural counties. Was that your statement?

Assemblyman Ellison:
Yes. Where I came up with that answer, if you look at some of the rural counties right now, they all pay into the state system. Eureka County takes very little of the education funds. They pay over 50 percent of the resources back to the state, so the NPOM tax comes back to the state. They do not pay for any education. The other one is Elko County, which takes very little of the education funding. If you go back and look in the rural counties, and I am hoping we can check into this, Eureka County and some of the rural counties take very little in education. That money comes back to the other part of the state.

Assemblyman Horne:
I will look into that because I have been working on the Assembly Committee on Ways and Means, particularly higher education funding. I know for a fact that the funding formula presented has more than $21 million coming from Clark County up to the rural schools to hold them harmless, et cetera. It has been said to me multiple times that Eureka County, and maybe money can address this, is sitting on $400 million. I certainly would like some explanation of how the rural schools are holding up the state in education, because those are certainly not the numbers that I have been seeing.

Assemblyman Ellison:
I would be happy to get that to you.

Chairwoman Bustamante Adams:
We have Mr. Garza and Mr. Zander.

Jim Garza, Member, Board of Directors, Great Basin Regional Development Authority; and Director, Community and Economic Development, White Pine County:
I represent two entities. We have submitted two documents that have been attached as one package (Exhibit I). The first document was signed by the newly elected chairwoman of Great Basin Regional Development Authority, Laurie Carson. The second document, which is the majority of the package

I submitted, includes comments and issues I wanted to address with the White Pine County Commission, as Director of Community and Economic Development for White Pine County.

There are a couple of things that are a major concern of ours. As an economic development director it is always important to look at the financial impacts that are going to come into play if S.J.R. 15 of the 76th Session passes. That is my job. I have to figure out what that amount is and how I am going to help the county recover that amount. Right now that question is unanswerable.

We know how much we are going to lose. If you look at the NPOM that White Pine County has received over the last five years, it is 49 percent of our current budget over that same period. That is a lot of money I have to make up.

I understand education is an issue. I have children in the educational system myself. I know something has to get done, and our commission understands and knows that higher education needs to have improvements.

What is of concern here is that there really is no true financial impact analysis that has been completed. What are the actual numbers we are dealing with here? What do we need to make up? What are the actual burdens that the state, the educational funds, or the teachers associations are trying to find solutions for? What is that dollar amount? I think that is important to know. That way we have a baseline of what we are going after, so we know what we are going to affect and we do not over affect.

Let me give you a good example of that. Based on the Department of Taxation's annual reports for the last five years, let us look at the state Distributive School Account. I looked at it seven years back. Five years back the highest amount was $111 million. In 2012 that dollar amount was $89 million. That is a decrease of $22 million. That is factual. It is in the documents. That is the kind of information that needs to be brought forward and understood. Are we trying to find a $22 million shortfall five years back, when we have $111 million that was funded into that budget? Are there more parameters that need to be added?

The NPOM tax was $253.3 million in 2012. Are we willing to affect $253.3 million for what I understand right now may be a $22 million plus shortfall? That is what an impact analysis does. It brings out that information. It establishes a baseline of what you are looking for, sets some parameters, and then goes after the most appropriate and legal way the state can acquire the

funds to meet that burden. That is what I have to do on a regular basis. That is what I think is good stewardship on my part as an economic director.

I ask that this Committee look at that issue, address it on an economic impact basis, and find the answers to those questions. What is it that is our burden? How are we going to find it? How is it going to affect the rural communities? Right now, the way this looks, it is affecting White Pine County's budget by 49 percent.

I asked a question of the LCB representative, Mr. Powers. He had mentioned that it is per NRS that mines have to continue to pay this tax burden; however, if there is litigation, is that tax burden then set aside and not distributed until that litigation is resolved? If that is the case, how long will that take? Five years, ten years, fifteen years? Is White Pine County going to be out of a supplemental type of tax, which appears to be collectable through NRS? Are those funds going to sit in an account, frozen, until the litigation is done? That will be devastating to Eureka, Lander, White Pine, and Pershing Counties, not just to the county governments, but to our hospitals, our capital improvement funds for our school districts, and our senior centers.

I would encourage you to give a hard look at the pamphlet I provided. That is why impact analysis is so important. It gives you the answers to your questions. We ask that you vote against S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblywoman Kirkpatrick:
I have a question and a comment. It is a little hard to swallow sometimes that we do not do anything to help the rest of the state, because I have a lot of constituents in my entity that want to know why it is always about gaming. Why is it not about someone else?

I came here today trying to have a fair hearing and not make it personal, so that we can have a real discussion about what we may or may not put on the ballot, and now it feels personal. It is really personal for me, because I represent about 64,900 people who do not see the same benefit that you do, but they see their gaming dollars go this way.

I am a little bit frustrated now because this is not what this meeting was intended to do. This is not how this particular Legislature has been working all session long to solve the issues. This is not about the teacher's union. This is

not about one industry over another. This is about policy. This is about doing what is best for the state.

I am trying to keep my composure because I remember the days when we helped out White Pine County when they had some tough times. I remember the days when we, and I did it myself, put in some payment in lieu of tax changes so that you could use it for roads, education, and other stuff. I have always been a Nevadan. I feel that to say you are going to lose all of this and it is the southern Nevada legislators' fault is offensive. I do not take that so well. I want to understand, because I particularly asked if anything changed except for the property tax, and my legal counsel said on the record, which could be used in court, that the net proceeds tax stays the same. I did not get the white sheet from the mining association. I did not get the same paper that you got. It is personal now and it should not be. This is about policy. This is about what is best for our state. I explain to my constituents all day long, and I think I particularly asked a question, that this may present a problem that we have to look at. If it comes out of the *Nevada Constitution*, we have to go back and we have to fund the counties that we do not. I understand that. We asked that question.

I do not really have a question anymore at this point because I think it is too personal, but it is not supposed to be. You made it personal, I did not, nor did this Committee, and at some point they are owed an apology. We have been way fairer than the Senate was on the other side and I am really offended.

Jim Garza:
It was not my intent to address this and offend this Committee. White Pine County understands, and our office understands, we have a responsibility to help this state. All we ask is that we know what the numbers are, so we can address how we can help, and at the same time how we can make sure that we maintain integrity in our communities. That is what the bottom line really is here.

We know this Committee has gone above and beyond to help with this issue, and it was not my intent to make this personal. My intent is strictly to look at the economic side of this, impact analysis, how it can be alleviated and managed, and how we can participate to help. We are willing to help. We just need to know with what dollar amount we are helping. What do we need to help provide? These are unanswered questions, and it is my job to make sure that our county is able to sustain economic impacts. All we are asking for is a baseline to work with so we can help you and help the state.

I apologize to the entire Assembly if the comment I made earlier was offensive.

Chairwoman Bustamante Adams:
Thank you, Mr. Garza. We will hear from Mr. Zander next. I would also like to call up Assemblyman Hansen, who represents several of the counties that are impacted. It is only because he is our colleague I am allowing him to come up now.

Jeff Zander, Superintendent, Elko County School District:
I became superintendent three years ago. For 22 years prior to that I was the chief financial officer for the school district, so I do have an understanding of the school funding formula in the state of Nevada and how it interacts with all the other counties. Also, being from Elko for a number of years, I have seen the boom and bust of the mining industry up there, and what has taken place in our communities. Earlier Assemblyman Ellison talked about rural counties making Clark County whole. I think it is important for the Committee to understand how the *Nevada Plan* works in regard to the wealth factors and how local wealth is equalized through the *Nevada Plan*.

Within the *Nevada Plan* you have three revenue sources. You have state revenue, federal resources, and local resources. Some of those revenues are included within the formula, and some are outside of the formula. One-third of all net proceeds tax, ad valorem resources, sales tax (Local School Support Tax) are included within the formula. Those resources accounted for outside of the formula are two-thirds of net proceeds tax and two-thirds of ad valorem revenues.

There was an earlier discussion of how rural counties make Clark County whole, or vice versa, in regard to the state of Nevada, school funding, and the *Nevada Plan*. The Distributive School Account floats based upon local wealth resources coming from Clark County. The huge ad valorem rolls that Clark County has in place have sort of balanced educational funding in the state of Nevada for years. Unfortunately, with this latest recession, we have had a huge decrease in local wealth resources coming from Clark County. Prior to that recession the Elko County School District, as an example, could equate $6 to every $1 Clark County received, so Clark County was basically making the rest of the state whole 6-to-1, or at least in Elko County's case.

In Elko County, we do not receive many net proceeds taxes. We have been fortunate to have the gold mines located around Elko County, so we have the majority of support services, and the majority of the students coming to this area living in Elko County. This has provided growth for our area. For the most part, those mines are located in Eureka and Lander Counties, and as a result and

due to the net proceeds tax distributions, Eureka and Lander Counties are both eligible to opt out of the *Nevada Plan*. So when we are talking about the *Nevada Plan* and the school districts in the *Nevada Plan,* we are actually talking about 15 school districts within the state. With this latest recession we have increased local resources with the rural counties, mainly Elko and Humboldt and the northeastern counties, versus Clark County with a decrease in local wealth. Now we are seeing a reversal of that 6-to-1 ratio, probably closer to a 3-to-1 ratio. So in a roundabout way the northeastern counties, in some ways, are making Clark County whole. That being said, the $70 million budget the Elko County School District maintains and the $30 million budget Humboldt County maintains in their general fund cannot make a $2.3 billion general fund budget in Clark County whole. But through the *Nevada Plan* and through the equalization of wealth, there is a mechanism going on where resources that would normally come to our county are being diverted to other counties throughout the state.

The second point I would like to make, so the Committee understands, is when local wealth is interjected into the *Nevada Plan* formula, it does not increase funding for education. Because the funding for education is deemed through the *Nevada Plan*, the *Nevada Plan* takes all the historical costs, the allocation of wealth from other funds, basic support ratios from others, and transportation costs for every school district and determines a unique per pupil allocation for each school district. Additional local wealth coming into the *Nevada Plan* does not increase funding for schools. What it does is relieve the obligation for the state to fund education.

From the standpoint of increased net proceeds tax coming into the school district funding formula, it does not truly increase funding because it is a fixed pool in regard to expenditure for those schools. You are going to see either a decrease of wealth to a larger metropolitan district or an increase in wealth to a more rural school district. Allocation of local resources to the *Nevada Plan* does not increase school funding.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] Assemblyman Hansen, could you state for the audience which counties you represent?

Assemblyman Ira Hansen, Assembly District No. 32:
My assembly district covers Washoe County (part), Humboldt County, Lander County, Pershing County, Esmeralda County, Mineral County, and a good portion of Nye County.

I will get right to it, policy and what is best for the state. This policy has been in the *Nevada Constitution* in one form or another since 1864. To give you an example of the impact we can have, let us jump to 1949. In 1949 the Nevada Legislature passed the Freeport law. The Freeport law basically did not tax inventories and it caused a minor boom for warehousing. What happened though was that in 1958 and 1960 they put that same question on the ballot and it went into the *Nevada Constitution*. Following that and the absolute certainty it created, there was an explosion in the warehousing industry in Nevada. The reason that happened had to do with the uncertainty factor. Anything the Legislature can do, it can also undo. So, even though it had promised the warehousing industry it would not tax its inventory, once that certainty was in the *Nevada Constitution*, it encouraged people to come and invest in our state.

It is the exact same principle with mining. The reason Nevada has had such a successful time with the mining industry is that same certainty factor. These people have and will invest literally billions of dollars in this state to explore and find gold, with the understanding that once they find it they will have the opportunity to reap their reward. Obviously, this is a commodity. It bounces all over the place. It is really a very risky investment. To help ensure they are willing to invest that money in our state and our economy, the protection in the *Nevada Constitution* has acted as a magnet for that capital investment in the state. Once we remove that, once we create that uncertainty factor, you are going to see a substantial decline in the amount of exploration and, ultimately, in tax revenue that comes into Nevada. Therefore, removing this from the *Nevada Constitution* will, in fact, be harmful. It will be bad policy for the state of Nevada. In the long run, it will ultimately result in a substantial decline in the amount of revenue that we receive in taxation, as well as being extremely devastating to the rural economies that especially nowadays are absolutely critically connected to the mining industry. That is the biggest part of this picture and we need to keep it in mind. This is going to create an uncertainty in investment. While Nevada does have a unique status as one of the great gold producers, 96 percent of gold is produced outside of the state of Nevada. There are other places they can go and invest. One of the reasons Nevada is so highly ranked, compared to the other 48 states where mining could potentially occur, is precisely because, in most other states, the tax and revenue policies are uncertain. Therefore, there is hesitancy on the part of an industry that cannot recoup its costs—in some cases not one nickel—for as many as 15 years after investing their money. They are not going to go where there is that kind of uncertainty. Once we remove this cap and place this ability to raise this tax situation into every two-year legislative session, we are going to drive this investment pool of billions of dollars out of our state. It will ultimately be bad policy and harmful for the State of Nevada.

That is the bigger picture. As far as all the school district stuff, I honestly do not know all the mathematics of it. I am just telling you that we are always trying to expand our economic development. California has a very poor tax and regulatory climate for business, yet you do not see those people rushing to Nevada, even though we have an excellent one by comparison. Why is that? It is because of the exact thing I am talking about. They are uncertain about how the Legislature is going to react in the future with our tax and regulatory policies.

If you were going to move your company from California and invest hundreds of millions of dollars in the process, only to discover that the Legislature here mirrors what has happened in the state you just left, what is the point in coming? So that is why this constitutional provision is so vital to maintain.

I would encourage you to think long term, to think of the impact on those rural economies, and vote no on S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] We will now transition to those who are in support of S.J.R. 15 of the 76th Session. In Las Vegas if I could have Mr. Ginsburg, Ms. Turner, Mr. Murillo, and Ms. Ocampo come to the table. Here in Carson City I would like Mr. Rocha, Mr. McCarthy, and Ms. McGill to come to the table. I am going to take Las Vegas first, because I do not want to lose the video feed.

Assemblyman Grady:
Before we proceed, I would like to make a quick comment. My colleague from Elko mentioned that I was downstairs testifying in the Assembly Committee on Natural Resources. I represent a community, Assembly District 38. We are just getting ready to open up a new mine. They have just secured a large part of the investment that is needed in that mine. This will be an underground mine and an open pit mine. We are very concerned with the passage of this bill that we could lose that mine or curtail their development for quite some time. They are, as many of my colleagues have mentioned, watching what is happening. There has been a big drop in gold prices in the last couple of weeks, and the investors inside and outside of the country are really watching what is happening here. I think we have to be extremely careful where we go.

Chairwoman Bustamante Adams:
Thank you, Assemblyman Grady. I appreciate your comments.

Marla Turner, Private Citizen, Las Vegas, Nevada:
I am here to express my support for S.J.R. 15 of the 76th Session (Exhibit J). We all know that when the mining industry's tax structure protections were written into the *Nevada Constitution*, the environment around mining and its importance to the state were very different. Its contributions and its place in the landscape of Nevada's economic well-being were huge. Those conditions made it possible for the industry to successfully argue for such protections.

Today, mining continues to play a very significant role, both economically and historically; however, the recognition that mining no longer needs such protections has been very well known to the state and its citizens for at least 25 years.

In 1987, my stepfather, Assemblyman Marvin Sedway, declared that the mining owners were not paying their fair share and he began efforts to repeal the constitutional protections. Two years later Nevadans voted overwhelmingly, by 3 to 1, in favor of S.J.R. 22 of the 64th Session, which has been commented on so many times today. That increased mining's taxes and contributions to 5 percent of its net proceeds, but as has also been stated earlier, it had the consequence of limiting the state's ability to impose any other tax on the industry. Anyone who says that the bill's sponsor, my stepfather, Assemblyman Marvin Sedway, was happy with the outcome of that does not remember our history. He voted against that measure after fiercely objecting to his original bill being co-opted and elimination of that bill's original intent.

Fast forward to today. Nevada faces unprecedented budget shortfalls and simultaneous desperate needs for revenue to address our big and costly problems. We all know what they are: deteriorating roads, education, et cetera. There are a myriad of problems and programs. We need to put our residents and our nation's hardest hit back to work. The question is, how do we do that? How do we do it in a way that causes the least distress for most?

I will not pretend that I have the answers, but surely the solution begins with creating a level playing field that does not allow exceptions for those who do not warrant it or do not need it.

I know mining owners believe that they are paying plenty. According to the Nevada Department of Taxation, transnational mining businesses made over $15 billion off of gold finds in Nevada between 2010 and 2011. That is a two-year period. They paid about $200 million in taxes to the State General Fund. That is an effective tax rate of under 2 percent. Compare that to gaming, which paid nearly $2 billion in taxes for 2012 alone.

I am sure every other business in Nevada feels the same way too, that they are paying plenty. Nevada residents also feel like they are paying plenty, when they pay their property taxes or see a slice of their paychecks go to the federal government, and yet no one but mining tries to get out of paying their fair share by basically saying I have not had to in the past and I do not want to now.

Some mining advocates will say that lifting the taxation cap could have repercussions beyond our state's borders. Mining advocates claim the repeal will actually decrease mining's contributions to the state. As we know from testimony earlier from LCB, that statement is inaccurate. The needs of the state have become dire, and the reasons to protect mining have become moot. Many of mining's owners, which the *Nevada Constitution* currently protects, are in many cases foreign-based companies getting rich off of Nevada's limited precious resources, and taking their money out of Nevada. It is time to stop that. Additionally, I believe the day will come when the proverbial well runs dry, and the mine owners will pack up and leave our state. What they are going to do is leave behind a bunch of unemployed people and holes in our land.

Nevada Governor Bob Miller said pretty much the same thing in his 1989 State of the State speech. This is what he said:

> The fact is this: mining does not pay its fair share to the state. A gold mine that would pay a million dollars in state and local taxes in Nevada pays $8 million in Colorado. And you know, that might be tolerable if the mines were taking a renewable resource from the ground. But, they are not. One day, the ore will be gone. And so will the companies. And so will that source of income.

In conclusion, I will just say that we cannot ever afford to give mining owners protections that are no longer warranted, discriminate against other businesses and industries that are not granted similar protections, and allow that same industry to take its proceeds out of Nevada. We can never afford to do that, but most especially not at a time like now when the state is facing such significant revenue challenges. Nor should we continue to allow the mining industry to control the narrative and threaten the state with pulling up stakes. That is like what teenagers do when you tell them they have to clean their rooms.

I urge you to vote in favor of S.J.R. 15 of the 76th Session, so we can start asking mining owners to pay their fair share and welcome them into the same family where every other industry in our state lives. It is time to do this now, not because it was from my stepfather, but because it is the right thing to do.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada:
We are in support of S.J.R. 15 of the 76th Session. It is nice to hear the industry finally take a position on S.J.R. 15 of the 76th Session, instead of claiming neutrality. It gives us an opportunity to address some of the concerns they have raised.

I just want to talk briefly. I have thrown out my talking points for the sake of brevity. I think we all have a bit of ad valorem today.

Despite what you have heard, the resolution really is not about taxes. I wish it was so that we could actually have that debate, but it is not. We have heard about the excessive burdens on the mining industry, the taxation that they struggle with, and that those taxes are about average for the nation. They are not average, at least not according to the U.S. Geological Survey, the U.S. Government Accountability Office, the U.S. Department of the Interior, and even the Cato Institute, which is a place I do not normally go to for tax policy advice.

Senate Joint Resolution 15 of the 76th Session is also not about what we fail to hear in the Economic Forum regarding mining and its taxation, which was not included on the agenda because its contributions to our revenue sources are not significant enough to even make that list. It is not about the microscopic gold that we heard about earlier, despite the fact that the microscopic gold we have in Nevada is among the highest concentrations of gold in the entire world. Barrick, for example, gets about 32 grams per ton out of their mine in the Carlin Trend. The global average for mining gold in particular is less than one gram per ton, so do not let them fool you, they are doing quite well with that microscopic gold.

I also wish S.J.R. 15 of the 76th Session addressed the environmental devastation or the cost that we incur as a result of hard rock minerals mining, but it does not. It does not talk about or address what will happen when the state's aquifers decide that they can no longer give up the more than ten million gallons of water that are required each and every day to keep the pits dry enough to mine. That ten million gallons per day is more than any U.S. city uses, except for Los Angeles, Chicago, and New York. It is not about the 200 years that it is going to take to repair those aquifers when the open pits

fill with toxic stew, totaling more in volume than all of our state's water sources combined.

Lastly, S.J.R. 15 of the 76th Session is not about the fact that this body is struggling right now to find ways to adequately fund a decent education for the kids in all of our counties. Enough gold left the state in 2012 to not only fund all of our schools above the top ranked states in the nation for the next ten years, but also to provide each classroom in those schools with a chalkboard covered in gold.

Unfortunately, S.J.R. 15 of the 76th Session has become about scaring our rural neighbors, brothers, and sisters into thinking that they are going to lose their funding. I cannot help but be a little upset and offended by some of what was said today. For those who are familiar with the Progressive Leadership Alliance of Nevada, we have consistently taken positions that are very unpopular in support of our brothers and sisters in the rural counties; in particular the Lincoln, White Pine, and Nye County water grab that the Southern Nevada Water Authority has been trying to push through. We have been fighting that tooth and nail for more than a decade, and we continue to do so, so that is a particular concern for me.

One thing that S.J.R. 15 of the 76th Session is about is allowing the people of this state, giving them permission, to undo something that the mining industry put into the *Nevada Constitution*, that is limiting our Legislature in making a decision on how the industry is taxed and how much it is taxed. It removes that limitation and puts it back into the hands of our duly elected representatives. That is all it does, nothing more. Once that passes a vote of the people, and we certainly hope that it will, we will be back here to have that debate about taxes.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Mayra Ocampo, representing the Service Employees International Union Nevada, Local 1107; and We Are Nevada Coalition:
The We Are Nevada Coalition is an organization of over 20 public sector unions and community organizations that unanimously voted to support S.J.R. 15 of the 76th Session in order to ensure no further cuts are seen in our education and health and human services. Our essential community services are already dealing with shoestring budgets. We are asking big business to pay their fair share, including mining.

A 2013 study by the Institute on Taxation and Economic Policy titled "Who Pays?: A Distributional Analysis of the Tax Systems in All 50 States" (Fourth Edition) documents in precise distributions state income taxes, sales, excise taxes, and property taxes paid by each income bracket. This report concluded what we have always known, that our states ask more of low- and middle-income families than they do of the wealthiest. This study also finds that states praised for low taxes are often high-tax states for low- and middle-income families. In Nevada, those in the lowest income bracket pay about 10 percent of their income in either sales or property tax. It is time for big business to become fully vested in doing business in Nevada, not only in looking at the profit margins, but also in the well-being of our community as a whole.

For Nevada to continue to thrive, Nevada business needs to pay its fair share. The special privilege mining has had for over 150 years in our state needs to be put to an end, and S.J.R. 15 of the 76th Session is a step toward seeing the right thing done in our state.

Ruben R. Murillo Jr., representing Clark County Education Association; and Nevada State Education Association:

Senate Joint Resolution 15 of the 76th Session is an issue of fairness, a level playing field for all businesses in Nevada. Senate Joint Resolution 15 of the 76th Session removes exempting one industry from taxation in the *Nevada Constitution*. No industry should be allowed this special privilege. If I were any other business in Nevada, without such guarantees in the *Nevada Constitution*, I would also be upset. Critics say that it is unfair to target one industry for taxation, but is it really fair to target one industry for special protection? I am glad to hear the discussion about funding for education because, to be honest with you, the Clark County School District has taken half a billion dollars in cuts, and the whole state a billion, out of the education budget. We are drowning. We are working with less material, less pay, and such. In order to recruit the best for our profession, and also provide the tools and materials necessary to provide our students a good education, we need funding, whether it is in the rural counties or in Clark County. I too do not want our teachers' salaries tied to the price of commodities. What I want are our teachers' salaries, funding, and education to be tied to a stable tax base paid for by every constituent and every business in this state.

You, the citizen Legislature, should have the ability to set rates equally among all Nevada industries. Again, it is a matter of fairness. As a citizen Legislature, allow the citizen voter of Nevada to make that determination.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] We will now hear from Carson City.

Guy Louis Rocha, Private Citizen, Carson City, Nevada:
I was the Nevada historian and state archivist for 28 years until my retirement in February 2009. I want to characterize my presentation today as a cross between a history lesson and an op-ed on mining tax policy. Obviously I have staked a position.

I am here today to testify on why the mining industry was treated differently than other businesses regarding tax policy when the *Nevada Constitution* was adopted in 1864. The issue during the constitutional convention of adopting a uniform property tax for all business enterprises including mining—versus providing an exemption for mineral extraction—was very controversial and complex. [Continued to read from prepared testimony (Exhibit K).]

Christine McGill, representing the Human Services Network:
The Human Services Network, primarily based in Washoe County, covers over 50 Nevada health and human services providers. We would just like to remind everyone that good economic development has two sides. It is not all about industry and it is not all about schools, services, and providers. There has to be a balance. Senate Joint Resolution 15 of the 76th Session is just one more tool to open up that discussion, to achieve that balance, so we can see how much taxes are needed to make sure we have vibrant thriving communities, so that we can attract new business.

The Health and Human Services Network would just like to remind you of that, and say they are in favor of S.J.R. 15 of the 76th Session.

Joe McCarthy, Private Citizen, Silver City, Nevada:
Thank you for allowing me to comment today on the importance of having the 2013 Nevada Legislature once again pass S.J.R. 15 of the 76th Session. I am a member of the Comstock Residents Association. I am currently a resident of Silver City, Nevada, and a 35-year resident of Nevada. I was the former executive director of the Brewery Arts Center for nearly a decade and Carson City's economic development and redevelopment director for more than a decade. I have been honored to serve our great state throughout my career, and I thank you as members of this Committee for all you do in dedicated service to Nevada.

The Comstock Residents Association is a proud member of the Progressive Leadership Alliance of Nevada, and my brief remarks today are addressed to the

difficult task you have in front of you, but I want to give you a little bit of a different perspective.

We believe, first of all, by once again approving S.J.R. 15 of the 76th Session and forwarding it on to the voters for their consideration, this Legislature will send a positive message of wise governance. It will be a clear, unequivocal statement that says our elected officials believe in good policy, and you believe in working very hard to create and continue to create an equitable tax system in our state.

Here is a case in point of why equitable taxation could protect us from the much used term "unintended consequences." Right now, the environmental degradation and the unraveling of community life currently happening in your Virginia City National Historic Landmark is a perfect example of why passage of S.J.R. 15 of the 76th Session is imperative. The Comstock communities and the historic landmark are currently under a threat posed by a gold mining project, and it is wreaking havoc on our land just ten miles from where we now sit. Open pit mining, such as this, seems to come to Nevada more often than not when the commodity prices bubble up. [Continued to read from prepared testimony (Exhibit L).]

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblyman Hickey:
Thank you for your passionate testimony, but it is a little odd to me that you speak about the national landscape or national treasure that is Virginia City, and the heritage you want to preserve. Is it not true that Virginia City would not be the national heritage that it is without the industry of mining? My question to you is about your concern, because it would seem that your real interest is in banning mining in the state. If the reasons to consider this resolution are, for instance, to help better fund education, this is almost like a tobacco issue here. Let us ban it, but then we will have no more revenue from which the taxes are derived. So, I am just wondering, are you really opposed to mining? What is it that you want the people and the representatives of the people to do in 2015? Are you hoping that we will ban mining?

Joe McCarthy:
The Comstock residents do not oppose mining. We support responsible mining, underground mining that is consistent with the history and the heritage of the area. What we have now is twenty-first-century, highly industrialized, open pit mining, which is the fastest way to tear down the mountain to access the gold. We want our public officials to work with this mining company, to not allow

open pit mining, but to allow them to do underground mining, which is consistent with the history of the area.

To the first part of your question, the Comstock has been celebrating the state of Nevada entering the Union because we were a mining state at that time. We have been celebrating that history. We have turned ourselves into that storytelling entity. In other words, we want to be consistent with the history, but we also do not want to lose our communities. Things have changed in the last 150 years.

Chairwoman Bustamante Adams:
We will transition to neutral now, as I do not want to lose the Department of Taxation before they have to leave. We had some questions regarding an assessor's role. Could Ms. Rubald come to the table.

Ms. Rubald, were you here when Assemblywoman Benitez-Thompson asked her question? I could have her repeat it if you need her to.

Terry Rubald, Chief, Local Government Services, Department of Taxation:
Yes, I was here, but I would like her to repeat it so I can answer more specifically for you.

Assemblywoman Benitez-Thompson:
I am just trying to get an idea of the time frame. I do not want to say establish the process, because I do not want it to be left on legislative record that there is an entirely new process that needs to be created within NRS Chapter 361 for the tax assessment of real property, but to change what we have in place in NRS Chapter 361. What would the time frame be in order to make any changes necessary in order to get a valid tax bill into mine owners' hands?

Terry Rubald:
It is my understanding that the net proceeds tax chapter, NRS Chapter 362, will stand with the exception of the portion that refers to the exemption of patented mining claims.

To flesh out the record, there are two kinds of mining claims. There are patented mining claims and unpatented mining claims. In the history of our country, the federal government owned all of the land. When they opened up the west to homesteading, there were homestead patents. Similarly, there were mining patents to encourage the mining of the west. The patent meant that ownership passed from the federal government to the mine. Unpatented mining claims means that they are in the process, there is a claim, so that the

miner can proceed to discover the extent of the resource and have some exclusivity there.

Currently in our statutes, as I said, the patented mining claims are eligible for an exemption if they can show that they have done $100 worth of labor directed toward mining on each claim. Sometimes patented mining claims are no longer under the ownership of the mine; they pass to the regular public, and are treated just like any other land. Sometimes a rancher will buy the patented mining claim and it will be used as agricultural property. It could be residential property, or it could be industrial property. The unpatented mining claims enjoy a complete exemption from taxation.

If S.J.R. 15 of the 76th Session were to pass, as I understand it, it removes the exemption portion of NRS Chapter 362, so patented mining claims would then have to be valued like other land in the state, and under NRS 361.227 land is valued according to fair market value. Generally speaking, the value of most land is established by comparable sales. That is pretty easy to do in communities where a lot of homes, residences, and retail businesses are on the market. You can establish what a comparable sale might generate. You can establish the value of that kind of land. For mining, there is not very much in the way of comparable sales. There could be some, and if that occurs I suppose there could be some sort of sales comparison approach. The trouble with those kinds of sales is they are dependent on how well the mineral underneath is defined, how much resource there is, and whether it is a proven or probable resource. So the comparable sales methodology might not be the best, although it is what is available. *Nevada Revised Statutes* 361.227 also has alternative methods for establishing value, one of which, and I think it was mentioned earlier today, is what we call the income approach. We could actually use the books and records of the business to figure out what the value would be. There is that methodology.

There are some other methodologies in the statutes already, and of course we have many, many regulations that flesh out those traditional methodologies that are used to establish the value of land. It may be that, because this is a special purpose type of property, when it is actually used for the purpose of a mine, those additional statutes or regulations might be necessary.

For instance, golf course land has a special use. We have special regulations that were adopted by the Nevada Tax Commission that laid out a specific methodology for how to value golf courses. Similarly, we have statutes and regulations that tell us how to value agricultural land. We have models and examples in the law already that tell us how to value particular kinds of special purpose land. That is a potential way to go.

If S.J.R. 15 of the 76th Session passes in November 2014, unless something is done now, we would not have any special purpose legislation on the books. We would revert to what is currently on the books, which are the traditional methodologies for establishing the value of land.

Assemblywoman Benitez-Thompson:
I am trying to clarify if we are completely reinventing the wheel and we have to establish a whole new section of NRS, or if we indeed have a framework that allows for an evaluation and methodology process, and we have a good starting place. That at least helps me in thinking about these time frames. As things play out, are we looking at starting at square one or are we 70 percent there, with just some additional tweaks needed in NRS? That is what I am trying to find out. It sounds as if it is mostly the latter. Some tweaks might be needed, but we do certainly not have to start from scratch with a methodology process and a way to go about doing this.

Terry Rubald:
Absolutely. We already have quite an established body of statutes and regulations that guide us in the evaluation of land.

Assemblywoman Neal:
This is interesting to me. You said there would be a void, so basically we would be back to figuring out the fair market value of the land because there would be no special use provision out there, no special designation.

What would you be valuing specifically? Are you valuing the mine? How would you know the value of the thing that is in the earth, without it being extracted? We are back in terms of speculation there.

Terry Rubald:
Absolutely. That is the difficult part of this: the value of the land.

Let me put in an aside here. The Department of Taxation already values all of the improvements according to replacement cost new less the statutory depreciation and all applicable obsolescence, so I do not think improvements are on the table here.

With regard to land, the point would be—and I think there are a couple of bills out there that are trying to propose the transition methodology—that the land would have to be valued without reference to the underlying mineral, because it is difficult to establish how much mineral there is to value. That is the problem: is it a probable, a proven, or a possible reserve?

Assemblywoman Neal:
I have been trying to read the history and understand all of the conversations that have happened. The fact that we are actually having some of the same conversations they had 50 years ago leaves me trying to understand where we go from here. There are two things that sparked my interest when you said "comparable sales." The first question I have is, comparable sales to what? To the change of the characterization of the property itself, when it morphs into something else, or the actual ore? You also mentioned that there are several different alternative methods where you could then deal with how this should be taxed, and you stated income as a method. That brought me back to the 1987 minutes, when they discussed S.J.R. 22 of the 64th Session. What was interesting in the minutes was that they talked about how 5 percent of the mine's net proceeds was a type of income tax. It struck me as something to highlight and think about, because I wanted to know what they meant. I found this funny, because they were actually explaining this amendment to my dad. He asked the question about how something was being treated.

Talk to me about the context in 1987 of this being treated as a type of income tax and if that is still a viable conversation. Then you can go back to the comparable sales question.

Terry Rubald:
The NPOM tax has often been compared to an income tax, because you start out with total income, or gross yield. You allow certain deductions, and you come up with a net against which the tax is applied. That is why it is like an income tax.

What we were talking about in the sales comparison approach was the valuation of the land, which is not net proceeds. The net proceeds is the value of the mineral. The land has been exempt under current law because it was felt the net proceeds of minerals tax basically took care of all of that, although for a patented mining claim you do have to make an application for the exemption.

If the land becomes taxable because the exemption is removed, then there are methodologies for establishing the value of the land. I think that was what some of the previous debate was about, whether you treat the value of the land as if it had an established mineral in it or just plain basic use, like any other kind of use in the state.

I am trying to demonstrate to you that there are methodologies already in the law that can account for value. There may need to be some tweaking to determine whether you are going to value that land as if it had the mineral resource under it or not.

Assemblywoman Neal:
That is completely different from my understanding of the whole concept that we are dealing with. I had asked you what the economic drivers were that drove the prepenalty tax that we imposed and then the weaning off. I really want to know the weaning off drivers.

Terry Rubald:
There actually have been several times throughout the history of the net proceeds tax where quarterly, three times a year, or biannual payments have been required of the industry. Sometimes advance payments have been required, and sometimes just as they are going along. It has been back and forth over the decades.

In 2001 it was decided that the prepayment system that had been in existence for a few years was causing some distress, because the mining industry would overpay causing a credit that would require a refund. It was causing distress to the local governments because sometimes the Department would come along and say the miner had overpaid and the local government needed to make a refund right then, especially to avoid interest. It might be late in the budget year, and they would have to scramble to find the money to pay the refund. It was decided at the time that it would be best to have an annual payment, after the production year was over, and the following April. The Department certifies the value to be taxed and the tax payments were made in May. We still have some portion of that left today, except we also have the prepayment system.

In 2008 we had a new law, Senate Bill No. 2 of the 25th Special Session, which required prepayment. That occurs on March 1 of each year. On March 1, 2013, the mines were paying for production that may not have occurred yet in 2013, just their best estimate. We still have the true-up system. They can pay quarterly if they find that they are having a banner year and they need to continue to make payments to avoid any penalties. We also have a true-up period that just finished up a couple days ago, where we figured out what the value of the minerals were, we applied the prepayments, and if there was anything left to be taxed, those bills have gone out and the mines will be expected to pay by May 10.

Assemblyman Stewart:
Would you agree that assessing the value of the mine would be a very volatile thing from period to period, based on the fact that the price of the mineral goes up and down, and the fact that the mineral would play out. It would not be a very consistent source of revenue based on that volatility. Is that an accurate statement?

Terry Rubald:
Yes, the NPOM tax has been known to be a volatile tax, because the price that mines receive for their product is often based on commodities markets and supply and demand around the world. Those commodity prices are often dependent on things beyond the borders of Nevada.

Assemblyman Stewart:
If you assess an agricultural field, it is fairly consistent. If you assess a factory, it is usually fairly consistent. With mining, you assess that real property based on what it has produced, then that production value goes up and down based on the stock market. One five-year period it might be worth $10 million and the next five-year period, if the mineral runs out, it is practically worthless. Is that accurate? It is a different system than normal. Is that correct?

Terry Rubald:
Let me put it this way, the net proceeds portion, the mineral valuation, is very volatile. The value of the improvements of the mine is relatively stable, because we value it according to NRS, based on replacement cost new less depreciation. So that portion is fairly stable. I think the valuation of the land would be more stable than a net proceeds volatility, because there is an actual use going on. Because we are based on the fair market value of the land, other kinds of property experience ups and downs in their economy, and the mines would also. I am not sure that the land value and the improvement value of the real property would be as volatile as the price for the mineral.

Chairwoman Bustamante Adams:
Senator Roberson, are you in neutral?

Senator Michael Roberson, Clark County Senatorial District No. 20:
I am here to explain some of the issues that have been raised by Ms. Rubald. I just noticed this on the television from my office. I think it is very important for me to mention a couple things, so there is no confusion with regard to what Ms. Rubald has mentioned as far as the taxation of patented and unpatented mining claims upon passage of S.J.R. 15 of the 76th Session. Could you give me one minute to give you some clarifying information about what we are doing in the Senate on this issue?

Chairwoman Bustamante Adams:
I will have you come under public comment.

Senator Roberson:
Madam Chairwoman, I think this is really important that we discuss this while you have Ms. Rubald here.

Chairwoman Bustamante Adams:
I do not think I have anybody else in neutral.

Senator Roberson:
For the record, I am not neutral.

Chairwoman Bustamante Adams:
Is there anyone in Las Vegas in neutral? [There was no one.] Is there anyone in Elko in neutral? [There was no one.] We will now take public comment from Senator Roberson. I would also like Ms. Bennett to come back to the table.

Senator Roberson:
I heard part of the discussion and Ms. Rubald and your attorneys with LCB are correct that nothing will change with regard to S.J.R. 15 of the 76th Session other than the ad valorem taxation of patented and unpatented mining claims. Many of us do not want to see the taxation of mining claims change with the passage of S.J.R. 15 of the 76th Session. We have put in many hours working with LCB staff, Ms. Rubald, Carole Vilardo, and mining exploration companies that had an interest in this. We drafted Senate Bill 401, which was heard in the Senate Committee on Revenue and Economic Development earlier this session. It is my understanding that the majority party in the Senate is going to take what is in S.B. 401 and put it in Senate Bill 400, which is still currently in Senate Revenue and Economic Development. Very simply, it does two things. It provides by statute that there will not be ad valorem taxation on unpatented mining claims, so the status quo is kept on unpatented mining claims. On patented mining claims, where you actually have land to deal with, we make it clear in statute that the valuation of those patented mining claims will not include what may or may not be underneath the surface of the ground. The point is to keep the status quo on mining claims.

The point of S.J.R. 15 of the 76th Session is not to make it more difficult for mom and pop companies who are out there exploring to try to discover whether there are minerals underneath the ground, and to be taxed before they actually take that mineral out from beneath the ground, if it is there.

So again, we can and are fixing this by statute. You should address it. You should study it yourself in this Committee, but I do not want anyone to get hung up on what I think is a red herring, which we are going to address this session statutorily. Regarding the larger policy of S.J.R. 15 of the 76th Session, I think you all know where I stand. I support it, and you are all smart enough to discern the truth from what you have heard today, to rely on your counsel, Mr. Powers and Ms. Erdoes, and not the testimony of some who have incentive to deceive you.

Chairwoman Bustamante Adams:
Thank you for your public comment. Ms. Bennett, we are ready for your public comment.

Dana R. Bennett, Ph.D., Owner, Bennett Historical Research Services, Phoenix, Arizona:
I thought I should get up and explain why I am bouncing up and down today. I am a Nevada historian who specializes in legislative history. I do not have a position on this bill. I know some of you are familiar with me from my previous life as a lobbyist, so I wanted to specify that.

I was asked to provide some context about the legislative history of the development of the current language in the *Nevada Constitution* dealing with the net proceeds of mines, and you have heard a lot of that already. You have a paper I put together (Exhibit M) that looks at how that was developed.

From 1981 it really originates with the tax shift from property to sales tax, through the approval by the voters on May 2, 1989, to place that in the *Nevada Constitution*. I know you are very pressed for time. I had planned to hit all of the highlights, and I will respond to your direction. If you would like me to do that, I will. If you would like me to make myself available to answer any questions you might have after you review the paper, I can do that as well.

Chairwoman Bustamante Adams:
I will do that. I will submit it for public record and allow the Committee members to contact you directly. Is there anyone in Las Vegas who would like to speak in the neutral position? I do not want you to go into full testimony on opposition or support, but if you would like to make a statement.

Angie Sullivan, Private Citizen, Las Vegas, Nevada:
I wanted to just comment on a couple of things. First of all, I wanted to comment on the Mining Oversight and Accountability Commission meetings, which I believe are under the direction of Governor Sandoval. I have attended several of those meetings. I am concerned about several things I have heard in the meetings about inspection and auditing. I am concerned that we most likely are not getting full and accurate information.

In the last meeting I was at, the people who are responsible for many of the oversight tasks did not even attend to report or answer questions. I am very concerned that we are not even getting a complete report of what is being done in mining. I am concerned that there is not a full report and that there is no transparency or accuracy.

I am not going to say Nevada mining is dishonest, but I am not sure why they present only their side of the case. There is no one there to force that issue, to look over and make sure everything is fair.

My second comment was about growing up in rural Nevada. I know there is probably a lot of concern within the rural communities, but if the truth were told, people who live in rural towns—like I have all my life except when I moved to Las Vegas to teach school—like Winnemucca, McDermott, Lovelock, Elko, and even Austin do depend on the boom and bust cycle of mining. That does not mean that mining should not be held responsible when there is a boom. I understand there is a bust cycle. I have seen the bust. I know the bankruptcy. I know how they leave Nevada. I know what happens when everyone in town loses their job overnight. I understand and I am going to be a voice for people who might be too scared for their jobs to speak out.

There is exploitation that happens. It is well known that you need to be quiet and you need to put up with it, because that is the only game in town and you are not allowed to be vocal about the problems in the work place, dangerous conditions, or how you are treated. You are not necessarily allowed to unionize. There is always the threat that they will leave and go somewhere else. Besides the cap that gives this industry an advantage, and besides their taking a commodity that cannot be restored, they have also exploited the people of Nevada long enough. Someone needs to make them accountable. They need to report what they are taking and how much money they are earning. They need to be fair to their labor here, whatever we have to do to make that happen. I would appreciate any and all corrections for the people of Nevada, in the entire state, north and south alike. It is just not fair what is going on, on many levels, financial and otherwise.

Chairwoman Bustamante Adams:
Mr. Dahl, you will be our last testifier before I adjourn the meeting. For the others seated at the table I will have to take your written testimony, as our Committee members have other hearings to attend. I will take written testimony from anyone—to include it as part of the public record—up until 5 p.m. tomorrow.

Demar Dahl, Chair, Board of Commissioners, Elko County:
I will just take a minute of your time. I have a point I think is important and needs to be expressed. I was just sitting here trying to figure out how to express this. I think there have been a lot of good arguments made already today.

In Elko County, just recently, a big mine bought a little mine and paid $2.3 billion for it. Let us say you were all members of the board of that mine and you hired me as the president and I came to you and proposed we buy this property. It is going to cost $2.3 billion. It is going to take approximately seven years before we will have any return on it. We can control what it is going to take to develop it, which is going to be approximately another billion dollars. We can control our production costs, as we have a pretty good idea how to do that. We can control the costs of the engineering, permitting, so on and so forth. What we cannot control is what we are going to get out of it. A few months ago the price of gold was around $1,800 per ounce. It was under $300 per ounce 11 or 12 years ago. So, in seven years, no one can tell you what it is going to bring, but we do have a pretty good idea of our costs. We will pay a lot of taxes, but we have a pretty good idea of what those taxes are going to be, because the *Nevada Constitution* requires or limits the Legislature in what they can do about raising those taxes. This is a big gamble. The only thing that we are really not sure of at this point is what we are going to receive in the way of revenue.

Then one of you says to me that the Legislature is considering changing that provision in the *Nevada Constitution*, so that at some point in the next few years they are going to be able to determine what the taxes are going to be. We do not know what they are going to be, so now there are two things that we do not know. We do not know what we are going to be able to get for what we sell, and we do not know what our taxes are going to be.

So one of you might say to me, do we not have some property in South Africa? Do you not think that we need to look somewhere else to develop what we are talking about developing in a mine? We may be killing the goose that lays the golden egg for us, and that goose would not be available.

Chairwoman Bustamante Adams:
Thank you Mr. Dahl for making the trip from Elko. As I need to close the hearing I will take written testimony from the gentlemen seated at the table.

Please state your name for the record, and if you are in opposition or support under public comment.

Graham Hollister, Jr., Private Citizen, Genoa, Nevada:
I am in support of S.J.R. 15 of the 76th Session (Exhibit N).

Vince Agamenone, Private Citizen, Lyon County:
I am from Lyon County and I am also in support of S.J.R. 15 of the 76th Session (Exhibit O).

Chairwoman Bustamante Adams:
Thank you everyone. [(Exhibit P), (Exhibit Q), (Exhibit R), (Exhibit S), (Exhibit T), (Exhibit U), (Exhibit V), (Exhibit W), (Exhibit X), (Exhibit Y), (Exhibit Z), (Exhibit AA), (Exhibit BB), (Exhibit CC), (Exhibit DD), (Exhibit EE), (Exhibit FF), (Exhibit GG), (Exhibit HH), (Exhibit II), and (Exhibit JJ) were presented but not discussed and are included as exhibits for the meeting.] I will close the hearing on S.J.R. 15 of the 76th Session. The meeting is adjourned [at 4:18 p.m.].

RESPECTFULLY SUBMITTED:

_____
Gina Hall
Committee Secretary

APPROVED BY:

_____
Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: _____

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

RICK COMBS, *Director*
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
MOISES DENIS, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Senator, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

February 22, 2013

Senator Michael Roberson
Senate Chambers

Dear Senator Roberson:

You have asked this office several questions relating to the taxation of mines and mining claims in connection with the constitutional amendment proposed by Senate Joint Resolution No. 15 (S.J.R. 15), which the Legislature passed for a first time during the 2011 legislative session. 2011 Nev. Stat., file no. 44, at 3871-72. In order for S.J.R. 15 to become effective as an amendment to the Nevada Constitution, it must be passed by the Legislature a second time, and it must be approved and ratified by the voters at the next general election in 2014, unless the Legislature authorizes a special election for that purpose. Nev. Const. art. 16, § 1; NRS 218D.800 & 218D.805.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1) of the Nevada Constitution. 2011 Nev. Stat., file no. 44, at 3871. In addition, S.J.R. 15 will repeal the provisions governing the taxation of mines and mining claims set forth in Article 10, Section 5 of the Nevada Constitution. Id. at 3872. In light of these proposed constitutional revisions, you have asked the following questions:

1. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?

2. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

3. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

The legal issue that is central to your first two questions is whether the repeal of the constitutional provisions in Article 10 governing the taxation of mines and mining claims will also repeal by implication: (1) the existing statutes governing the net proceeds tax in NRS Chapter 362; or (2) the existing statutes exempting patented and unpatented mines and mining claims from the property tax in NRS Chapter 361. After considering your questions in light of the fundamental rules of constitutional and statutory construction, we have come to the following conclusions.

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

Unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8), which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

BACKGROUND

I. Overview of the existing provisions of Article 10 of the Nevada Constitution regarding the taxation of mines and mining claims.

Under the existing provisions of Article 10, Section 1(1), the Legislature may not impose a property tax on mines or mining claims except as authorized by Article 10, Section 5. Based on the existing provisions of Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost. In addition, the

existing provisions of Article 10, Section 5 provide for specialized tax treatment of patented mines and mining claims. To better understand these constitutional provisions governing the taxation of mines and mining claims, we believe it will be helpful to provide a brief explanation of patented and unpatented mines and mining claims.

Under American mining law, a person may enter certain public lands to search for, discover and locate valuable mineral deposits for the purpose of establishing ownership interests in any such deposits that are found. 1 American Law of Mining § 30.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person discovers a valuable mineral deposit and completes the required acts of location in accordance with law, the person acquires rights to an unpatented mining claim, which is a possessory interest in a particular area of public land solely for the purpose of mining. Id. at § 30.05[6]; 30 U.S.C. § 612(a); N. Alaska Envtl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007). A person who acquires rights to an unpatented mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011) (citing 30 U.S.C. § 612(b)).

A person who holds a valid unpatented mining claim may, but is not required to, apply for a mineral patent to obtain fee title to the land from the government. 1 American Law of Mining § 30.06[2] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person's mining claim is patented in accordance with law, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. Id. at § 30.06[5]; Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996).

Under the existing provisions of Article 10, Sections 1(1) and 5, unpatented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive. By contrast, patented mines or mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive.

II. Historical overview of the taxation of mines and mining claims in Nevada.

Throughout Nevada's history, there has been considerable debate concerning the proper approach to tax mines and mining claims. See Political History of Nevada, 103, 106-07 (11th ed. 2006). This difference in opinion has resulted in the passage of various constitutional and

statutory provisions regarding the taxation of mines and mining claims. Because these prior constitutional and statutory provisions offer important historical insight into the constitutional revisions proposed by S.J.R. 15, we believe it will be helpful to provide a brief historical overview of the taxation of mines and mining claims in Nevada.

A. The taxation of mines and mining claims by Nevada's Territorial Legislative Assembly.

During the years preceding adoption of the Nevada Constitution in 1864, there was a sharp divide in the Territory of Nevada between mining interests and agricultural interests over the proper approach to tax mines and mining claims. See State v. Eastabrook, 3 Nev. 173, 178 (1867). The mining interests believed that mines and mining claims should be exempt from taxation and that, if any taxation was to be imposed on mining operations, only the proceeds from productive mines and mining claims should be assessed and taxed. Id. The agricultural interests believed that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. Id.

During the first session of Nevada's Territorial Legislative Assembly in 1861, the Legislative Assembly exempted "[m]ining claims" from property taxation. 1861 Nev. Laws, ch. 50, § 4, at 146. During its second session in 1862, the Legislative Assembly narrowed the exception so that it applied only to "[u]nproductive mining claims." 1862 Nev. Laws, ch. 124, § 4, at 132. However, during its third and final session in 1864, the Legislative Assembly removed the exemption for mining claims and provided that "mining claims and possessory rights thereto" were subject to property taxation. 1864 Nev. Laws, ch. 35, § 2, at 38.

The validity of the 1864 territorial law that taxed possessory rights in mining claims was challenged in an action heard by the Nevada Supreme Court after Nevada became a state. Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104 (1865). The mining company claimed that taxation of its possessory rights in mining claims located on property owned by the Federal Government violated the Act of Congress organizing the Territory of Nevada which provided that "no tax shall be imposed upon the property of the United States." 12 Stat. 209, 211, § 6 (1861). The court determined that "a Territorial Legislature may tax any species of property, whether real, personal, or mixed, corporeal or incorporeal, so far as they are not restrained by the Organic Act." 1 Nev. at 107. Because case law had "universally treated the possessory rights of the miner as an estate in fee," the court concluded that such possessory rights were a taxable species of real property in Nevada because the miner's possessory rights in the underlying minerals were separate from the Federal Government's ownership of the land. Id. at 106-07.

Even though the Hale & Norcross case involved the interpretation of the Act of Congress organizing the Territory of Nevada, we believe that case is equally applicable to the

interpretation of the Nevada Constitution because Nevada's organizing act operated as the constitution for the Territory of Nevada before its statehood.[1] Therefore, we believe the Hale & Norcross case stands for the proposition that a person's possessory rights in mining claims must be taxed as real property in Nevada unless there is an exemption from such taxation authorized by the Nevada Constitution.

B. The taxation of mines and mining claims under the constitution proposed by Nevada's first constitutional convention in 1863.

The Territory of Nevada held its first state constitutional convention in 1863, where the debate over the proper approach to tax mines and mining claims commanded much of the delegates' attention. See Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada, 225-29, 239-52, 264-81 (1972). The constitutional convention ultimately approved the following provision:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, *including mines and mining property*[.]

Id. at 429 (emphasis added).

Based on its proposed constitutional language, Nevada's first constitutional convention adopted the approach that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. However, the first constitutional convention's approach to the taxation of mines and mining claims was met with great public opposition, and the voters of the Territory of Nevada rejected the proposed constitution. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178, 185 (1912).

C. The taxation of mines and mining claims under Article 10 of the Nevada Constitution.

The Territory of Nevada held its second state constitutional convention in 1864, where the debate over the proper approach to tax mines and mining claims continued with vigor. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State

---

[1] See Nat'l Bank v. County of Yankton, 101 U.S. 129, 133 (1880) ("The organic law of a Territory takes the place of a constitution as the fundamental law of the local government."); Carter v. Gear, 197 U.S. 348, 353 (1905) ("the Organic Act stands in the place of a constitution for the Territory of Hawaii, to which its laws must conform."); Trustees of Sch. Dist. No. 1 v. County Comm'rs, 1 Nev. 334, 340-41 (1865) (striking down certain territorial laws enacted in violation of Nevada's organic act).

Constitutional Convention of 1864, 222-30, 318-87, 405-33, 436-47, 499, 500, 513-21 (1866). The second constitutional convention ultimately approved the following provision, which was ratified by the voters as Article 10, Section 1 of the Nevada Constitution:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed*[.]

Nev. Const. art. 10, § 1 (1864) (emphasis added).

In one of its earliest cases interpreting Article 10, Section 1, the Nevada Supreme Court stated that the provision, as ratified in 1864, embraced two main propositions:

> First, that all property assessed for an ad valorem tax should be liable to pay the same percentage; second, that unproductive mines should be entirely free from taxation, whilst those which were productive should pay the regular ad valorem tax on the products, instead of the same tax on the body of the mine itself. There can be no doubt but it was the intention that the entire product should be taxed, in lieu of the body of the mine. This property is different from all other property in the State.

State v. Eastabrook, 3 Nev. 173, 178 (1867).

The provisions of Article 10, Section 1 governing the taxation of mines and mining claims were amended in 1902, 1906 and 1989. In 1902, the voters ratified an amendment that required patented mining claims to be assessed and taxed at a valuation of $10 per acre. This real property tax on patented mining claims was imposed in addition to the taxes collected on the proceeds of the patented mining claims. Specifically, the 1902 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed, but the acreage of patented mining claims shall also be assessed at a valuation of ten dollars per acre*[.]

Nev. Const. art. 10, § 1 (1902) (emphasis added).

In 1906, the voters ratified an amendment which repealed the prior 1902 amendment and which required patented mines to be assessed and taxed at not less than $500, except that no such tax would be collected when $100 in labor was actually performed on the patented mine during the year. When collected, this real property tax on patented mines was imposed

in addition to the taxes collected on the proceeds of the patented mines. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178 (1912) (interpreting the 1906 amendment). Specifically, the 1906 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500) except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds*[.]

Nev. Const. art. 10, § 1 (1906) (emphasis added).

In 1989, the voters ratified an amendment which repealed the prior 1902 and 1906 amendments and which amended Article 10, Section 1(1) into its current form. The 1989 amendment provided:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.*

Nev. Const. art. 10, § 1(1) (emphasis added).

In addition to revising Article 10, Section 1(1), the 1989 amendment added a new Section 5 to Article 10 to govern the taxation of mines and mining claims, as follows:

> 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.
> 2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.
> 3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any

> mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Nev. Const. art. 10, § 5. With this background in mind, we turn now to answering your specific questions.

DISCUSSION

I. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?

Under Article 10, Section 1(1), the Legislature "shall provide by law for *a uniform and equal rate of assessment and taxation*, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory," except for property that is exempted from the property tax under the authority of the Nevada Constitution. Nev. Const. art. 10, § 1(1) (emphasis added). The Nevada Supreme Court has described the purpose of the Uniform and Equal Clause in Article 10, Section 1(1) as follows:

> [T]he constitutional convention, in using the language last quoted, meant to provide for at least one thing in regard to taxation: that is, that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property. If the language we have quoted did not express this idea, then it was perfectly meaningless.

State v. Eastabrook, 3 Nev. 173, 177 (1867); United States v. State ex rel. Beko, 88 Nev. 76, 86-87 (1972); List v. Whisler, 99 Nev. 133, 138 (1983).

Because the Uniform and Equal Clause in Article 10, Section 1(1) was used by the framers in connection with the taxation of "property," the Nevada Supreme Court has interpreted the Uniform and Equal Clause as a limitation only on the *ad valorem* property tax, and the court has consistently held that the provision does not limit the Legislature's power to impose other types of taxes on businesses, trades or professions. Ex parte Robinson, 12 Nev. 263, 267-70 (1877); Ex parte Cohn, 13 Nev. 424, 426-27 (1878); In re Dixon, 43 Nev. 196, 204-05 (1919); see also Harris v. City of Reno, 81 Nev. 256, 260 (1965). Thus, to the extent that Article 10, Section 1(1) requires "a uniform and equal rate of assessment and taxation," that provision applies only to Nevada's property tax. It does not apply to other types of taxes, such as excise taxes, privilege taxes or taxes on mineral production. See 5 American Law of Mining §§ 191.03[1][a] & 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005 &

2010) (explaining the differences between property taxes and taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes).

Because Article 10, Section 1(1) requires the property tax to be imposed on "all property, real, personal and possessory," the Legislature cannot exempt any property from the property tax unless the exemption is authorized by the Nevada Constitution. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Thus, in the absence of an exemption from the property tax authorized by the Nevada Constitution, all real, personal and possessory property must be assessed and taxed at a uniform rate.[2] Eastabrook, 3 Nev. at 177-78; Beko, 88 Nev. at 86-87; Whisler, 99 Nev. at 138.

To implement Nevada's property tax in accordance with Article 10, Section 1(1), the Legislature enacted NRS Chapter 361, which provides that all property of every kind and nature is subject to the property tax unless the property is exempted by law. NRS 361.045; State v. Wells, Fargo & Co., 38 Nev. 505, 529 (1915) ("the constitution authorizes and the statute directs that all property of every kind, character, and nature not specifically exempted, is subject to taxation."). The provisions of NRS Chapter 361 are carried out by various state and local tax officials who determine the value of the property being taxed and collect the property taxes imposed for state and local purposes.

To determine the value of the property being taxed, the tax officials first ascertain the taxable value of the property, which must not exceed its full cash value. NRS 361.227. The tax officials then assess the property at 35 percent of its taxable value to arrive at its assessed value. NRS 361.225. To calculate the total amount of property tax that is due, the tax officials apply the state and local property tax rates to the assessed value of the property. NRS 361.445 to 361.470, inclusive.

Under both the Nevada Constitution and NRS Chapter 361, there are limitations on the total property tax levy that may be made for all public purposes. The Nevada Constitution provides that the total property tax levy that may be made for all public purposes must not exceed $5.00 on each $100 of assessed valuation. Nev. Const. art. 10, § 2. The Legislature has enacted a more stringent limitation in NRS Chapter 361, which provides that the total property tax levy that may be made for all public purposes must not exceed $3.64 on each $100 of assessed valuation. NRS 361.453. However, the Legislature has provided for certain

[2] Even though Article 10, Section 1(1) requires that all property must be taxed at a uniform rate, it does not prohibit the Legislature from delegating to each local taxing district the power to fix the rate of taxation for local purposes. State ex rel. Williams v. Fogus, 19 Nev. 247, 249-50 (1885). Therefore, although all property must be taxed at a uniform rate within each local taxing district, "the rate is fixed in each [local taxing district] without reference to the rate established in others." Id. at 250.

exceptions from the statutory limitation in special or emergency circumstances. See, e.g., NRS 354.705, 354.723 & 450.760; 2001 Nev. Stat., 17th Spec. Sess., ch. 6, § 6, at 109.

Early in this State's history, the Nevada Supreme Court held that the net proceeds of extracted minerals are a type of personal property that must be assessed and taxed at the same rate or percentage as other taxable property. City of Virginia v. Chollar-Potosi Gold & Silver Mining Co., 2 Nev. 86, 91-92 (1866); Eastabrook, 3 Nev. at 177-81. Therefore, without the exemption authorized by the Nevada Constitution, the net proceeds of extracted minerals would be assessed and taxed as personal property at the same rate or percentage as other taxable property under NRS Chapter 361.

As discussed previously, the existing provisions of Article 10, Section 1(1) exempt mines and mining claims from the property tax and further provide that mines and mining claims must be assessed and taxed only as provided in Article 10, Section 5. Under Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost.

In accordance with Article 10, Section 5, the Legislature enacted the current provisions of NRS Chapter 362, which impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds. NRS 362.140. Generally speaking, NRS Chapter 362 establishes a graduated tax rate, with a minimum rate of 2 percent and a maximum rate of 5 percent, where "the rate of tax upon the net proceeds of each geographically separate extractive operation depends upon the ratio of the net proceeds to the gross proceeds of that operation as a whole." NRS 362.140.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1), and it will repeal the provisions governing the tax upon the net proceeds of minerals extracted set forth in Article 10, Section 5. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the existing statutory provisions governing the tax upon net proceeds.

In addressing this legal issue, we are guided by several "well-established precepts of statutory and constitutional construction." We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008). As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).

Because "[i]mplied repeals of statutes by later constitutional provisions are not favored," every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments. 16 Am. Jur. 2d Constitutional Law § 51 (2009); Henslee v. Madison Guar. Sav. & Loan, 760 S.W.2d 842, 846 (Ark. 1988) ("a basic and fundamental rule when considering the effect of both statutes and constitutional amendments is that repeal by implication is not favored."). Thus, in determining whether a later constitutional amendment repeals existing statutes by implication, courts will indulge every possible presumption in favor of the constitutionality of the statutes, and courts will construe the statutes in a manner that renders them valid and enforceable if there is any reasonable basis for doing so. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009); Kneip v. Herseth, 214 N.W.2d 93, 101 (S.D. 1974); Cass v. Dillon, 2 Ohio St. 607, 610-11 (1853).

To this end, courts will make every effort to construe existing statutes as if they were amended to conform with a new constitutional provision, rather than construing them as being repealed by implication. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009). Accordingly, "[w]herever such a construction is possible, a new constitutional amendment must be held to amend existing statutory law to agree with such amendment, and those parts of a statute which do not conflict with a constitutional provision retain their validity." Id. at § 50; DeKalb County v. Allstate Beer, Inc., 192 S.E.2d 342, 346 (Ga. 1972) ("an amendment of the constitution must be held to amend the existing statute law to agree with such an amendment.").

To determine whether an existing statute is repealed by implication by a new constitutional provision, courts ask whether "the Legislature under the new constitutional provision could validly have enacted the same statute." State ex rel. Agnew v. Schneider, 253 N.W.2d 184, 196 (N.D. 1977). If the Legislature could have validly enacted the same statute under the new constitutional provision, the existing statute is valid and enforceable, even though the Legislature may have originally enacted the existing statute under a different constitutional provision. Id. at 195-96. In other words, if an existing statute "is sufficiently consistent with the new Constitution to have been capable of passage after the new Constitution took effect . . . the statute cannot be said to have been repealed by implication." State ex rel. Stokes v. Probate Ct., 246 N.E.2d 607, 611-12 (Ohio Ct. App. 1969).

When these rules are applied to the constitutional amendments proposed by S.J.R. 15, we believe that the existing statutes governing the net proceeds tax will not be repealed by implication if S.J.R. 15 becomes effective because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

S.J.R. 15 will repeal the property tax exemption in Article 10, Section 1(1) for mines and mining claims. However, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing property tax exemption for net proceeds of minerals extracted. Under Article 10, Section 1(6), the Legislature is required to exempt business inventories from the property tax. More importantly, Article 10, Section 1(6) also provides that "[t]he Legislature may exempt any other *personal property*, including livestock." Nev. Const. art. 10, § 1(6) (emphasis added).

Because the net proceeds of extracted minerals are personal property, the Legislature would have the authority under Article 10, Section 1(6) to exempt such net proceeds from the property tax even after the repeal of the property tax exemption for mines and mining claims in Article 10, Section 1(1). And because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as being enacted under the authority of Article 10, Section 1(6) to save them from being repealed by implication. In other words, because the Legislature could have validly enacted the same statutes under the authority of Article 10, Section 1(6), it is the opinion of this office that the existing statutes governing the net proceeds tax will remain valid and enforceable if S.J.R. 15 becomes effective, even though the Legislature may have originally enacted the statutes under the constitutional provisions being repealed by S.J.R. 15.

S.J.R. 15 will also repeal the provisions of Article 10, Section 5 which prohibit the Legislature from imposing additional taxes on minerals or their proceeds. Without the constitutional limitation in Article 10, Section 5, the Legislature would have the authority to impose taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes. 5 American Law of Mining §§ 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010 & 2011). Because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, we believe that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as a valid and enforceable tax on mineral production given that there is a reasonable basis for doing so.

It is well established that "[t]he power to tax all the property and business within this state is an essential attribute of its sovereignty, and there is no restraint upon its exercise when within constitutional limits, except the responsibility of the members of the legislature to their constituents." Ex parte Robinson, 12 Nev. 263, 268-69 (1877). As further explained by the Nevada Supreme Court:

> [T]he legislature is vested with all governmental powers not expressly denied to it by the Constitution of the United States and the Constitution of Nevada. This

> principle was first declared with respect to taxation in Gibson v. Mason, 5 Nev. 283, 292 (1869), and has been reasserted from time to time.

Matthews v. State ex rel. Tax Comm'n, 83 Nev. 266, 268 (1967). Thus, but for the limitations imposed by Article 10, Section 5, the Legislature would have the power to tax all aspects of mineral production.

According to the legislative history of Article 10, Section 5, one of the purposes of the constitutional provision was to ensure that the Legislature did not have the power to impose any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section. Legislative History of S.J.R. 22, 64th Reg. Sess. & 65th Reg. Sess. (Nev. LCB Research Library 1987 & 1989).[3] During the legislative hearings on Article 10, Section 5, it was emphasized that "a severance tax would be prohibited because [it] would be a tax on the mineral." Id. at 309. Thus, as understood by the framers of Article 10, Section 5, the constitutional provision prohibits the Legislature from imposing any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section.

This interpretation of Article 10, Section 5 is consistent with the contemporaneous legislation enacted by the Legislature in 1989 to implement the constitutional provision. Senate Bill No. 61, 1989 Nev. Stat., ch. 25, at 31-52; see Hendel v. Weaver, 77 Nev. 16, 20 (1961) ("contemporaneous legislation may always be considered in force in constitutional interpretation."); Halverson v. Miller, 124 Nev. 484, 489 (2008) ("this court looks to the Legislature's contemporaneous actions in interpreting constitutional language to carry out the intent of the framers of Nevada's Constitution."). In the 1989 legislation, the Legislature enacted a statement of legislative intent in which it declared that "the proposed constitutional limitations upon the taxation of minerals and their proceeds preclude a tax upon . . . *[t]he extraction and ordinary mining processes involved in the extraction of minerals*." 1989 Nev. Stat., ch. 25, § 1, at 31-32 (emphasis added).

If S.J.R. 15 becomes effective, the Nevada Constitution will no longer contain a limitation which restricts the power of the Legislature to impose taxes on mineral production. Without the constitutional limitation in Article 10, Section 5, the Legislature would be restored to its full power to tax all aspects of mineral production, and there would be a reasonable basis for construing the existing statutes governing the net proceeds tax as a valid and enforceable tax on mineral production if such a construction would save the existing statutes from being repealed by implication.

---

[3] Article 10, Section 5 originated in Senate Joint Resolution No. 22 (S.J.R. 22), which was passed by the Legislature in 1987 and 1989 and approved by the voters at a special election held on May 2, 1989.

Generally speaking, a tax on mineral production embraces "all exactions, however denominated, that are imposed on an event or an activity associated with mineral production and that are measured by the value or quantity of the mineral produced. Such levies are frequently called severance or production taxes, but they are also labeled as privilege, license, occupation, conservation, and other measures." 5 American Law of Mining § 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010). Typically, a tax on mineral production has the following characteristics: (1) it is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district; (2) it is administered by the state department of revenue or taxation, instead of being administered by local tax officials; (3) it is collected by the state department of revenue or taxation, usually at monthly or quarterly intervals, instead of being collected by local tax officials annually; and (4) the proceeds of the tax do not necessarily inure to the benefit of the local taxing district where the production activities are conducted. 5 American Law of Mining §§ 191.03[1][a] & 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005, 2010 & 2011).

Based on our examination of Nevada's existing statutes governing the net proceeds tax in NRS Chapter 362, we believe that those existing statutes reasonably can be construed as containing most of the typical characteristics of a tax on mineral production. In particular, Nevada's existing net proceeds tax is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district. NRS 362.140. The tax is administered and collected by the State Department of Taxation, instead of being administered and collected by local tax officials, but the tax is collected annually, rather than monthly or quarterly. NRS 362.100 to 362.240, inclusive. Finally, only a portion of the proceeds of the tax are appropriated to the local taxing district where the production activities are conducted. NRS 362.170. The remainder of the proceeds belong to the State.

Given that the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, it is the opinion of this office that there would be a reasonable basis for construing the existing statutes as a valid and enforceable tax on mineral production after the repeal of Article 10, Section 5. Therefore, it is the opinion of this office that such a reasonable construction would save the existing statutes governing the net proceeds tax from being repealed by implication if S.J.R. 15 becomes effective.

In sum, even though S.J.R. 15 will repeal the provisions of Article 10 concerning the taxation of mines and mining claims, it is the opinion of this office that the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Consequently, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

II. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

A person who acquires rights to an unpatented mine or mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. 1 American Law of Mining § 30.05[6] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); N. Alaska Envtl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007); Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011). Even though an unpatented mine or mining claim is only a possessory interest in the minerals underlying the public land, that possessory interest is a species of real property for the purposes of the property tax. NRS 361.035 & 361.075; Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104, 106-07 (1865).

Under the existing provisions of Article 10, Section 1(1), unpatented mines and mining claims are exempt from the property tax. To implement the constitutional exemption for unpatented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 361.075 which exempts unpatented mines and mining claims from the property tax in NRS Chapter 361.

When a person who has rights to an unpatented mine or mining claim takes the steps necessary to obtain a patent for the mine or mining claim, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. 1 American Law of Mining § 30.06[5] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996). Because patented mines and mining claims consist of an ownership interest in land, they are a species of real property in Nevada for the purposes of the property tax. NRS 361.035 & 362.030.

Under the existing provisions of Article 10, Section 1(1), patented mines and mining claims are exempt from the property tax. However, under the existing provisions of Article 10, Section 5, patented mines and mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines and mining claims are exempt from the property tax in NRS Chapter 361. To implement the constitutional exemption for patented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 362.030 to 362.095,

inclusive, which exempts patented mines and mining claims from the property tax in NRS Chapter 361 upon the recording of an affidavit of labor verifying that the labor requirement has been satisfied.

Thus, both patented and unpatented mines and mining claims are a form of real property in Nevada for the purposes of the property tax. However, based on the existing constitutional provisions in Article 10, patented and unpatented mines and mining claims are entitled to exemptions from the property tax. But if S.J.R. 15 becomes effective, it will repeal the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the corresponding statutory provisions which exempt patented and unpatented mines and mining claims from the property tax.

As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).

Under the Nevada Constitution, the Legislature cannot exempt any property from the property tax unless the exemption is authorized by a specific constitutional provision. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Therefore, if S.J.R. 15 becomes effective and repeals the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims, the corresponding statutory exemptions will be repealed by implication unless there is another specific constitutional provision which would authorize the statutory exemptions and save them from being repealed by implication. As a result, we must examine the Nevada Constitution to determine whether there is such a constitutional provision.

Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we have already concluded that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority

to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Article 10, Section 1(8) authorizes the Legislature to exempt "property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Under most circumstances, patented and unpatented mines and mining claims are not used for municipal, educational, literary, scientific or other charitable purposes. However, because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those patented and unpatented mines and mining claims are used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy" as contemplated by Article 10, Section 1(8). See NRS 362.010(2), 362.100(2)(c) & 362.140(4). Therefore, we believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims that are used for geothermal operations. But outside of this limited context, we do not believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Finally, Article 10, Section 6 prohibits the Legislature from enacting property tax exemptions without making certain findings to support the exemptions. In particular, Article 10, Section 6 provides that:

> 1. *The Legislature shall not enact an exemption from any ad valorem tax on property* or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail *unless the Legislature finds that the exemption:*
>
> (a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and
>
> (b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Nev. Const. art. 10, § 6 (emphasis added).

Based on the plain language of Article 10, Section 6, that section is not an independent source of constitutional authority for the Legislature to enact property tax exemptions. Rather, it establishes procedural limitations which the Legislature must observe when it enacts property tax exemptions that are authorized by other constitutional provisions. Therefore, we

do not believe that Article 10, Section 6 would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Accordingly, based on our examination of the Nevada Constitution, it is the opinion of this office that the existing statutory property tax exemptions for patented and unpatented mines and mining claims will be repealed by implication if S.J.R. 15 becomes effective, except with regard to patented and unpatented mines and mining claims that are used for geothermal operations. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361, unless the patented and unpatented mines and mining claims are used for geothermal operations.

III. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

Since the ratification of the Nevada Constitution in 1864, Article 16, Section 1 has contained provisions which authorize the Legislature to propose any amendment or amendments to the Constitution. Under those provisions, if the proposed amendment or amendments are "*agreed to by a Majority of all the members elected to each of the two houses*, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen." Nev. Const. art. 16, § 1 (emphasis added). If, in the next Legislature, the proposed amendment or amendments are "*agreed to by a majority of all the members elected to each house*, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe." Id. (emphasis added). If the people approve and ratify the proposed amendment or amendments, "such amendment or amendments shall . . . become a part of the Constitution." Id.

Although Article 16, Section 1 authorizes the Legislature to propose constitutional amendments, it does not specify the type of legislative measure that must be used to make such proposals. When a state constitution does not specify the type of legislative measure that must be used to propose constitutional amendments, the general rule is that the legislative body may use a resolution adopted by both Houses to make such proposals. Mason's Manual of Legislative Procedure § 145(2) (2010).

Consistent with this general rule, the Legislature has from its earliest sessions proposed constitutional amendments by the use of resolutions. See Senate Journal, 3rd Sess., at 43, 48

(Nev. 1867); Senate Journal, 4th Sess., at 17, 27 (Nev. 1869). For example in 1871, the Assembly used Assembly Concurrent Resolution No. 110 to propose amending Article 10, Section 1 by striking therefrom the words "except mines and mining claims, the proceeds of which alone shall be taxed." Assembly Journal, 5th Sess., at 94 (Nev. 1871).[4]

Although the Legislature has consistently used resolutions to propose constitutional amendments, it has not consistently used the same term to describe the resolutions. In the legislative sessions before 1919, the Legislature employed multiple terms to describe such resolutions, including "concurrent resolution," "joint resolution," "joint and concurrent resolution," "conjoint resolution" and "proposal to amend the Constitution," and sometimes the Legislature employed several of these terms within the same legislative session.[5] However, beginning with the 1919 legislative session, it appears that the Legislature adopted the practice of using only the term "joint resolution" to describe resolutions proposing constitutional amendments, and it appears that the Legislature has consistently followed that practice for the past 94 years. See, e.g., 1919 Nev. Stat., file nos. 6, 19 & 20, at 478 & 486-87; 2011 Nev. Stat., file no. 44, at 3871-72.

When the Nevada Constitution was ratified in 1864, Article 4, Section 18 provided that "*a majority of all the members elected to each House* shall be necessary to pass every bill or *joint resolution.*" Nev. Const. art. 4, § 18 (1864) (emphasis added). Thus, as originally ratified by the voters, both Article 4, Section 18 and Article 16, Section 1 required the same number of votes to pass legislation or to propose a constitutional amendment—a majority of all the members elected to each House.

In 1994 and 1996, however, the voters approved several amendments to Article 4, Section 18 that were proposed by an initiative petition pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that "an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or *joint resolution* which creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception which provides that "*[a] majority of all of the members elected to each House* may refer any measure which

---

[4] The Assembly Journal from 1871 does not show any further action on Assembly Concurrent Resolution No. 110 after it was introduced and referred to committee.

[5] See, e.g., 1869 Nev. Stat., file nos. 1 & 2, at 307 ("Proposal to Amend the Constitution"); 1877 Nev. Stat., file no. 6, at 213-14 ("Conjoint Resolutions"); 1877 Nev. Stat., file no. 23, at 221 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 6, at 149 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 7, at 149 ("Conjoint Resolution"); 1879 Nev. Stat., file no. 26, at 166 ("Concurrent Resolution"); 1903 Nev. Stat., file no. 13, at 232 ("Joint and Concurrent Resolution"); 1903 Nev. Stat., file no. 23, at 240 ("Concurrent Resolution").

creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Because the two-thirds voting requirement in Article 4, Section 18 refers to "joint resolutions," we must consider two legal issues. First, we must consider whether the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments given that Article 16, Section 1 contains its own specific voting requirement which requires only a majority of all the members elected to each House to propose constitutional amendments. Second, even if the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments, we must consider whether those joint resolutions qualify for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

To date, there are no reported decisions from the Nevada Supreme Court that have addressed these legal issues. In the absence of any controlling decision from the Nevada Supreme Court, we must apply the rules of constitutional construction, and we must consider historical evidence, case law from other jurisdictions and other legal sources for guidance in this area of the law.

In 1798, the United States Supreme Court addressed a similar legal issue in a case where the plaintiffs argued that Congress did not validly propose the Eleventh Amendment to the Federal Constitution. Hollingsworth v. Virginia, 3 U.S. 378 (1798). The plaintiffs argued that when Congress exercised its power to propose the Eleventh Amendment under the Amendments Article of the Federal Constitution, Congress failed to submit the proposed amendment to the President for approval or disapproval under the Legislative Article, which provides that:

> *Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary* (except on a question of Adjournment) *shall be presented to the President of the United States*; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. Const. art. I, § 7 (emphasis added).

The Supreme Court rejected the plaintiffs' argument and held that the Eleventh Amendment was constitutionally adopted. 3 U.S. at 382. Although the Supreme Court did not provide any explanation in its opinion for rejecting the plaintiffs' argument, Justice Chase stated that "[t]here can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381 n.

Following the Hollingsworth decision, many state courts have held that legislative proposals to amend the state constitution "are not the exercise of an ordinary legislative function nor are they subject to the constitutional provisions regulating the introduction and passage of ordinary legislative enactments, although they may be proposed in the form of an ordinary legislative bill or in the form of a Joint Resolution." Collier v. Gray, 157 So. 40, 44 (Fla. 1934).[6] As a general rule, these courts have found that the process of proposing constitutional amendments is a separate and independent function that is unconnected with the process of passing ordinary bills and resolutions. See, e.g., Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896) ("The provision for adopting resolutions proposing amendments is distinct from, and independent of, all provisions which are provided for the government of legislative proceedings."); Commonwealth v. Griest, 46 A. 505, 508 (Pa. 1900) ("the separate and distinctive character of this particular exercise of the power of the two houses is preserved, and is excluded from association with the orders, resolutions and votes, which constitute the ordinary legislation of the legislative body."). As further explained by the Colorado Supreme Court:

> The power of the general assembly to propose amendments to the constitution is not subject to the provisions of article 5 regulating the introduction and passage of ordinary legislative enactments. . . . Section 2 of article 19 prescribes the method of proposing amendments to the constitution, and no other rule is prescribed. It is not, therefore, by the "legislative" article, but by the article entitled "amendments," that the legality of the action of the general assembly in proposing amendments to the constitution is to be tested. Article 19 is *sui generis*; it provides for revising, altering and amending the fundamental law of the state, and is not *in pari materia* with those provisions of article 5 prescribing the method of enacting ordinary statutory laws.

Nesbit v. People, 36 P. 221, 223 (Colo. 1894).

Consequently, under the interpretative rule favored by a majority of state courts that have addressed the issue, "[a] proposal by the legislature of amendments to the constitution is not the exercise of ordinary legislative functions, and is not subject to constitutional

---

[6] Jones v. McDade, 75 So. 988, 991 (Ala. 1917); Mitchell v. Hopper, 241 S.W. 10, 11 (Ark. 1922); Nesbit v. People, 36 P. 221, 223-24 (Colo. 1894); People v. Ramer, 160 P. 1032, 1032-33 (Colo. 1916); Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914); Hays v. Hays, 47 P. 732, 732-33 (Idaho 1897); State ex rel. Morris v. Mason, 9 So. 776, 795-96 (La. 1891); Opinion of Justices, 261 A.2d 53, 57-58 (Me. 1970); Warfield v. Vandiver, 60 A. 538, 538-43 (Md. 1905); Julius v. Callahan, 65 N.W. 267, 267 (Minn. 1895); Edwards v. Lesueur, 33 S.W. 1130, 1135 (Mo. 1896); In re Senate File 31, 41 N.W. 981, 983-88 (Neb. 1889); State ex rel. Wineman v. Dahl, 68 N.W. 418, 418-20 (N.D. 1896); Commonwealth v. Griest, 46 A. 505, 505-10 (Pa. 1900); Kalber v. Redfearn, 54 S.E.2d 791, 793-98 (S.C. 1949); Moffett v. Traxler, 147 S.E.2d 255, 258-60 (S.C. 1966).

provisions regulating the introduction and passage of ordinary legislative enactments." Cooney v. Foote, 83 S.E. 537, 539 (Ga. 1914). Under this interpretative rule, a state legislature is required to comply only with the specific provisions in the Amendments Article that govern the proposal of constitutional amendments, and it is not required to comply with the general provisions in the Legislative Article that govern the passage of legislation.

It should be noted, however, that a small minority of state courts have rejected this interpretative rule. These courts have held that specific constitutional provisions governing the proposal of constitutional amendments must be interpreted and harmonized with general constitutional provisions governing ordinary legislative action. Geringer v. Bebout, 10 P.3d 514, 515-24 (Wyo. 2000); State ex rel. Livingstone v. Murray, 354 P.2d 552, 556-58 (Mont. 1960); Smith v. Lucero, 168 P. 709, 709-13 (N.M. 1917). As explained by the Wyoming Supreme Court:

> [W]e do not find cited cases [from other states] persuasive because the interpretive rule, which led to a result which differs from our result in this case, was based on reading constitutional provisions as sequestered pronouncements. We continue to be persuaded that our rule of reading the Wyoming Constitution as an integrated document composed of separate parts but united together for a more complete, harmonious and coordinated entity is the proper rule of interpretation. . . . In several cases, an appellate court's result was reached by distinguishing "law making" from proposals of constitutional amendments, which were viewed by those courts as not being "law making." We perceive little if any difference between the process employed by the legislature in enacting bills which may become a part of Wyoming Statutes and the process used to propose constitutional amendments. To the extent there is a difference, it is not a meaningful distinction which we need to recognize. In the final analysis, the Legislature is engaged in the process of "law making." We are unable to find anything in the cited decisions, which rely on that line of reasoning, that persuades us to adopt it.

Geringer, 10 P.3d at 523-24.

Because of the split in case law from other jurisdictions, we cannot determine with any reasonable degree of certainty whether the Nevada Supreme Court would follow the interpretative rule favored by the majority or minority view. However, we believe that when either interpretative rule is applied to the provisions of the Nevada Constitution at issue, the end result is the same—joint resolutions proposing constitutional amendments under Article 16, Section 1 do not have to satisfy the two-thirds voting requirement in Article 4, Section 18.

If the Nevada Supreme Court were to follow the interpretative rule favored by the majority view, the Legislature would be required to comply only with the specific majority

voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments. The Legislature would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form."

By contrast, if the Nevada Supreme Court were to follow the interpretative rule favored by the minority view, the provisions of Article 16, Section 1 would have to be interpreted and harmonized with the provisions of Article 4, Section 18. But when those provisions are interpreted and harmonized together in accordance with the rules of constitutional construction, we believe that any joint resolution proposing constitutional amendments qualifies for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

When interpreting the provisions of the Nevada Constitution, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). In applying those rules of construction, the court has indicated that its primary task is to ascertain the intent of the framers and to adopt an interpretation that best captures their objective. Id. As explained by the court, "[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law." State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883). Thus, "[w]hatever meaning ultimately is attributed to a constitutional provision may not violate the spirit of that provision." Miller v. Burk, 124 Nev. 579, 590-91 (2008); Lueck v. Teuton, 125 Nev. 674, 680 (2009).

When two or more constitutional provisions relate to the same subject matter, the court strives to "give effect to all controlling legal provisions *in pari materia*." State of Nev. Employees Ass'n v. Lau, 110 Nev. 715, 718 (1994). In other words, whenever possible, constitutional provisions relating to the same subject matter must be read together and harmonized so that each of the provisions is able to achieve its basic purpose without creating conflicts or producing unintended consequences or unreasonable or absurd results. We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008) ("[W]hen possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results."). To this end, when two or more constitutional provisions apply to a given situation and create an ambiguity, the court will endeavor to reconcile the provisions consistently with what reason and public policy would indicate the framers intended. See Halverson v. Miller, 124 Nev. 484, 489-91 (2008); We the People Nev., 124 Nev. at 883-89. As stated by the court, "[i]f a constitutional provision's language is ambiguous, meaning that it is susceptible to 'two or more reasonable but inconsistent interpretations,' we may look to the provision's history, public policy, and reason to determine what the voters intended." Burk, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)); Lueck, 125 Nev. at 680.

Based on its review of the history of the two-thirds voting requirement, the Nevada Supreme Court has explained the purpose of the requirement as follows:

> The supermajority requirement was intended to make it more difficult for the *Legislature* to pass new taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore new sources of revenue.

Guinn v. Legislature (Guinn II), 119 Nev. 460, 471 (2003) (emphasis added). The court has also noted that the two-thirds voting requirement contains an exception which "permits a majority of the Legislature to refer any proposed new or increased taxes for a vote at the next general election." Id. at 472 n.27.

By requiring the Legislature to act by a two-thirds majority vote to pass revenue-generating measures, the framers of the constitutional provision clearly wanted to restrict the power of the Legislature to enact such measures into law through the ordinary legislative process. Nev. Const. art. 4, § 18(2). However, by also providing that the Legislature could act by a traditional majority vote to refer such measures to the people at the next general election, the framers clearly did not want to restrict the power of the Legislature to refer such measures to the voters for approval or disapproval. Nev. Const. art. 4, § 18(3).

Because the Legislature's power to refer revenue-generating measures to the voters under Article 4, Section 18 is substantially the same as its power to refer constitutional amendments to the voters under Article 16, Section 1, we believe that the two provisions must be interpreted and harmonized together as substantially equivalent provisions. In describing the state legislature's power to propose constitutional amendments to the voters, the Colorado Supreme Court has stated:

> [I]n proposing an amendment to the constitution, the action of the general assembly is initiatory, not final; a change in the fundamental law cannot be fully and finally consummated by legislative power. Before a proposed amendment can become a part of the constitution, it must receive the approval of a majority of the qualified electors of the state voting thereon at the proper general election. When thus approved it becomes valid as part of the constitution by virtue of the sovereign power of the people constitutionally expressed.

Nesbit v. People, 36 P. 221, 224 (Colo. 1894).

We believe that the foregoing description applies equally to the Legislature's power to propose revenue-generating measures to the voters under Article 4, Section 18. When the Legislature proposes such measures, its action is initiatory, not final, and its proposal cannot be fully and finally consummated by legislative power. Instead, the proposal must receive the

approval of the voters, and only then does it become law by virtue of the sovereign power of the people constitutionally expressed.

Thus, the spirit and purpose of the referral provisions in Article 4, Section 18 can be construed consistently and harmoniously with the spirit and purpose of the referral provisions in Article 16, Section 1. Under these equivalent referral provisions, the Legislature is authorized to refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. Consequently, when these equivalent referral provisions are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters.

Even though we have not found a case directly on point, we believe that our conclusion is supported by the reasoning in Lockman v. Secretary of State, 684 A.2d 415, 419 (Me. 1996). In Lockman, the Maine Legislature, by a majority vote, passed a joint resolution which proposed a competing measure to be placed on the general election ballot with an initiative petition pursuant to Article IV, Section 18 of the Maine Constitution. The plaintiffs argued that the joint resolution was invalidly enacted without a two-thirds vote under Article IV, Section 16 of the Maine Constitution. Section 16 provided that no act or joint resolution could take effect until 90 days after the adjournment of the session in which it was passed, unless the Maine Legislature, by a two-thirds vote, directed otherwise. Even though the joint resolution did not comply with the 90-day provision in section 16 because it was passed with only a majority vote, the Maine Supreme Court rejected the plaintiffs' argument and held that "section 16 applies to acts and resolves that have the force of law and *does not apply to the approval of competing measures that will become law only if approved by the voters*." Id. at 419 (emphasis added).

Like the two-thirds voting requirement at issue in Lockman, Nevada's two-thirds voting requirement does not apply to measures that will become effective only if approved by the voters. It follows, therefore, that Nevada's two-thirds voting requirement does not apply to joint resolutions proposing constitutional amendments because such measures become effective only if approved by voters.

In sum, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless

approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

CONCLUSION

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Because Article 10, Section 1(6) authorizes the exemption of personal property from the property tax, and because the net proceeds are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective. Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8),

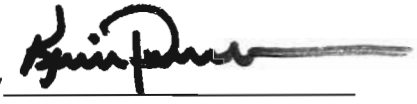
which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Kevin C. Powers
Chief Litigation Counsel

KCP:dtm
Ref No. 130221052939
File No. OP_Roberson130221183853

NOTICE OF A SPECIAL ELECTION

I, Frankie Sue Del Papa, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that a Special Election will be held on May 2, 1989, and that the following constitutional amendment questions are to appear on the May 2, 1989, Special Election Ballot.

QUESTION NO. 1

Amendment to the Constitution

Senate Joint Resolution No. 22 of the 64th Session

(EXPLANATION - Matter underlined is new; matter in brackets [ ] is material to be omitted.)

SENATE JOINT RESOLUTION - Proposing to amend the Nevada constitution to establish a tax on the net proceeds of minerals extracted at rates separate from the tax on property.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 be amended and a new section be added to article 10 of the constitution of the State of Nevada to read respectively as follows:

Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] only as provided in section 5 of this article.

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

270

6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

QUESTION NO. 1

Shall the Nevada constitution be amended to allow the taxation of minerals at a rate different than other property and to limit other taxes upon minerals and their proceeds?

YES. 107,679.....
NO...39,663....

EXPLANATION TO QUESTION NO. 1

The proposed amendment would allow the legislature to tax the net proceeds of mines at a rate different than other property, up to the constitutional limit of 5 percent.

ARGUMENT FOR PASSAGE

This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes.

ARGUMENT AGAINST PASSAGE

There is a perception that the mining industry already pays sufficient taxes.

FISCAL NOTE

Passage of this proposal would have no adverse fiscal impact on state or local governments. It would, however, allow the legislature to increase the tax on net proceeds of mines estimated to generate $52 million in the next two fiscal years as indicated in the Governor's budget.

271

ARTICLE. 10. - Taxation.

Section 1. **Uniform and equal rate of assessment and taxation; valuation of property; exceptions and exemptions; inheritance and personal income taxes prohibited.**

1. The Legislature shall provide by law for a **uniform and equal rate** of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of **all property, real, personal and possessory**, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

2. **Shares of stock, bonds, mortgages, notes,** bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and **shall be exempt**.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. **Personal property** which is moving in interstate commerce through or over the territory of the State of Nevada, or **which was consigned to a warehouse**, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and **shall be exempt from taxation.** Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon **business inventories** by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories **are exempt from taxation.** The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

NOTICE OF A SPECIAL ELECTION

I, Frankie Sue Del Papa, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that a Special Election will be held on May 2, 1989, and that the following constitutional amendment questions are to appear on the May 2, 1989, Special Election Ballot.

QUESTION NO. 1

Amendment to the Constitution

Senate Joint Resolution No. 22 of the 64th Session

(EXPLANATION - Matter underlined is new; matter in brackets [ ] is material to be omitted.)

SENATE JOINT RESOLUTION - Proposing to amend the Nevada constitution to establish a tax on the net proceeds of minerals extracted at rates separate from the tax on property.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 be amended and a new section be added to article 10 of the constitution of the State of Nevada to read respectively as follows:

Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] only as provided in section 5 of this article.

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

270

6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

QUESTION NO. 1

Shall the Nevada constitution be amended to allow the taxation of minerals at a rate different than other property and to limit other taxes upon minerals and their proceeds?

YES. 107,679.....
NO...39,663....

EXPLANATION TO QUESTION NO. 1

The proposed amendment would allow the legislature to tax the net proceeds of mines at a rate different than other property, up to the constitutional limit of 5 percent.

ARGUMENT FOR PASSAGE

This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes.

ARGUMENT AGAINST PASSAGE

There is a perception that the mining industry already pays sufficient taxes.

FISCAL NOTE

Passage of this proposal would have no adverse fiscal impact on state or local governments. It would, however, allow the legislature to increase the tax on net proceeds of mines estimated to generate $52 million in the next two fiscal years as indicated in the Governor's budget.

271

ARTICLE. 10. - Taxation.

Section 1. **Uniform and equal rate of assessment and taxation; valuation of property; exceptions and exemptions; inheritance and personal income taxes prohibited.**

1. The Legislature shall provide by law for a **uniform and equal rate** of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of **all property, real, personal and possessory**, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

2. **Shares of stock, bonds, mortgages, notes,** bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and **shall be exempt**.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. **Personal property** which is moving in interstate commerce through or over the territory of the State of Nevada, or **which was consigned to a warehouse**, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and **shall be exempt from taxation.** Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon **business inventories** by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories **are exempt from taxation.** The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

Sec. 2. **Total tax levy for public purposes limited.** **The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.**

Sec. 3. **Household goods and furniture of single household exempt from taxation.** All household goods and furniture used by a single household and owned by a member of that household are exempt from taxation.

Sec. 3[A]. **Food exempt from taxes on retail sales; exceptions.** The legislature shall provide by law for:

1. The exemption of food for human consumption from any tax upon the sale, storage, use or consumption of tangible personal property; and

2. These commodities to be excluded from any such exemption:

(a) Prepared food intended for immediate consumption.

(b) Alcoholic beverages.

Sec. 4. **Taxation of estates taxed by United States; limitations.** The

legislature may provide by law for the taxation of estates taxed by the United States, but only to the extent of any credit allowed by federal law for the payment of the state tax and only for the purpose of education, to be divided between the common schools and the state university for their support and maintenance. The combined amount of these federal and state taxes may not exceed the estate tax which would be imposed by federal law alone. If another state of the United States imposes and collects death taxes against an estate which is taxable by the State of Nevada under this section, the amount of estate tax to be collected by the State of Nevada must be reduced by the amount of the death taxes collected by the other state. Any lien for the estate tax attaches no sooner than the time when the tax is due and payable, and no restriction on possession or use of a decedent's property may be imposed by law before the time when the tax is due and payable in full under federal law. The State of Nevada shall:

1. Accept the determination by the United States of the amount of the taxable estate without further audit.

2. Accept payment of the tax in installments proportionate to any which may be permitted under federal law.

3. Impose no penalty for such a deferred payment.

4. Not charge interest on a deferred or belated payment at any rate higher than may be provided in similar circumstances by federal law.

Sec. 5. **Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.**

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Sec. 6. **Enactment of exemption from ad valorem tax on property or excise tax on retail sales.**

1. The Legislature shall not enact an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail unless the Legislature finds that the exemption:

(a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

(b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

2. In enacting an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail, the Legislature shall:

(a) Ensure that the requirements for claiming the exemption are as similar as practicable for similar classes of taxpayers; and

(b) Provide a specific date on which the exemption will cease to be effective.

EXHIBITS IN SUPPORT OF TESTIMONY OF

JAMES WADHAMS ON BEHALF OF

NEWMONT MINING CORPORATION

ON SJR 15

Assembly Committee on Taxation
May 2, 2013 at 1:00 p.m.

Exhibit No.	Description
1.	The 2011 vote of SJR 15
2.	The text of Ballot Question 1 on the Special Election in 1989 which resulted from SJR 22 from the 1987 and 1989 Legislature
3.	The text of SJR 15 of the 2011 Legislature repealing the exact words added by Ballot Question 1
4.	The text of Article 10, Section 1 and 2 of the Nevada Constitution with highlights to show the property of industries that have been exempted from taxation and the overall maximum limit on taxes on property
5.	PLAN Legal Brief
6.	The decision of the Nevada Supreme Court on "uniform and equal" in the case List v. Whisler, 113 Nev. 133
7.	The decision of the Nevada Supreme Court on "uniform and equal" in the case Sun City Summerlin Community Association v. State, 113 Nev. 835
8.	The decision of the Nevada Supreme Court defining "just valuation" in the case, State v. Virginia T.R. CO., 23 Nev. 283
9.	The decision of the Nevada Supreme Court defining the tax on minerals in the case, Consolidated Coppermines Corp. v. State, 68 Nev. 298

EXHIBIT 1

76th (2011) Session
Vote on SJR15 (As Introduced) on Senate Final Passage
May 28, 2011 at 7:54 PM

| 13 Yea | 8 Nay | 0 Excused | 0 Not Voting | 0 Absent |

Shirley Breeden	Yea
Greg Brower	Nay
Barbara Cegavske	Nay
Allison Copening	Yea
Mo Denis	Yea
Don Gustavson	Nay
Elizabeth Halseth	Nay
Joe Hardy	Nay
Steven Horsford	Yea
Ben Kieckhefer	Yea
Ruben Kihuen	Yea
John Lee	Yea
Sheila Leslie	Yea
Mark Manendo	Yea
Mike McGinness	Nay
David Parks	Yea
Dean Rhoads	Nay
Michael Roberson	Yea
Michael Schneider	Yea
James Settelmeyer	Nay
Valerie Wiener	Yea

76th (2011) Session
Vote on SJR15 (As Introduced) on Assembly Final Passage
June 6, 2011 at 7:27 PM

| 27 Yea | 15 Nay | 0 Excused | 0 Not Voting | 0 Absent |

Paul Aizley	Yea
Elliot Anderson	Yea
Kelvin Atkinson	Yea
Teresa Benitez-Thompson	Yea
David Bobzien	Yea
Steven Brooks	Yea
Irene Bustamante Adams	Yea
Maggie Carlton	Yea
Richard Carrillo	Yea
Marcus Conklin	Yea
Richard (Skip) Daly	Yea
Olivia Diaz	Yea
Marilyn Dondero Loop	Yea
John Ellison	Nay
Lucy Flores	Yea
Jason Frierson	Yea
Edwin Goedhart	Nay
Pete Goicoechea	Nay
Tom Grady	Nay
John Hambrick	Nay
Scott Hammond	Nay
Ira Hansen	Nay
Cresent Hardy	Nay
Pat Hickey	Nay
Joseph Hogan	Yea
William Horne	Yea
Marilyn Kirkpatrick	Yea
Randy Kirner	Nay

Kelly Kite	Nay
Pete Livermore	Nay
April Mastroluca	Yea
Richard McArthur	Nay
Harvey Munford	Yea
Dina Neal	Yea
John Oceguera	Yea
James Ohrenschall	Yea
Peggy Pierce	Yea
Tick Segerblom	Yea
Mark Sherwood	Yea
Debbie Smith	Yea
Lynn Stewart	Nay
Melissa Woodbury	Nay

Session Info | NELIS | Interim Info | Law Library | General Info | Counsel Bureau | Research Library | Assembly | Senate | FAQs
View Scheduled Meetings | Publications | Proposals | Career Opportunities | Gift Shop
Site Map | Contact Us

EXHIBIT 2

NOTICE OF A SPECIAL ELECTION

I, Frankie Sue Del Papa, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that a Special Election will be held on May 2, 1989, and that the following constitutional amendment questions are to appear on the May 2, 1989, Special Election Ballot.

QUESTION NO. 1

Amendment to the Constitution

Senate Joint Resolution No. 22 of the 64th Session

(EXPLANATION - Matter underlined is new; matter in brackets [ ] is material to be omitted.)

SENATE JOINT RESOLUTION - Proposing to amend the Nevada constitution to establish a tax on the net proceeds of minerals extracted at rates separate from the tax on property.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 1 of article 10 be amended and a new section be added to article 10 of the constitution of the State of Nevada to read respectively as follows:

Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] only as provided in section 5 of this article.

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

270

6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

QUESTION NO. 1

Shall the Nevada constitution be amended to allow the taxation of minerals at a rate different than other property and to limit other taxes upon minerals and their proceeds?

YES. 107,679.....
NO...39,643....

EXPLANATION TO QUESTION NO. 1

The proposed amendment would allow the legislature to tax the net proceeds of mines at a rate different than other property, up to the constitutional limit of 5 percent.

ARGUMENT FOR PASSAGE

This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes.

ARGUMENT AGAINST PASSAGE

There is a perception that the mining industry already pays sufficient taxes.

FISCAL NOTE

Passage of this proposal would have no adverse fiscal impact on state or local governments. It would, however, allow the legislature to increase the tax on net proceeds of mines estimated to generate $52 million in the next two fiscal years as indicated in the Governor's budget.

271

EXHIBIT 3

SENATE JOINT RESOLUTION NO. 15–COMMITTEE ON REVENUE

MARCH 28, 2011

Referred to Committee on Revenue

SUMMARY—Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to repeal the provision establishing a separate tax rate and providing for assessing and disbursing the tax on the net proceeds of mines.

Legislative Counsel's Digest:

Section 5 of Article 10 of the Nevada Constitution provides for a tax upon the net proceeds of mines which is separate from the tax imposed on all other property. This resolution proposes to repeal the constitutional provision establishing a separate tax on the net proceeds of mines.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 10 of the Nevada Constitution be amended to read as follows:

Section 1. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory . [~~, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.~~]

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in

property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the

income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

And be it further

RESOLVED, That Section 5 of Article 10 of the Nevada Constitution is hereby repealed.

TEXT OF REPEALED SECTION

Sec. 5. Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

(30)

EXHIBIT 4

ARTICLE. 10. - Taxation.

Section 1. **Uniform and equal rate of assessment and taxation; valuation of property; exceptions and exemptions; inheritance and personal income taxes prohibited.**

1. The Legislature shall provide by law for a **uniform and equal rate** of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of **all property, real, personal and possessory**, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

2. **Shares of stock, bonds, mortgages, notes,** bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and **shall be exempt**.

3. The Legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. **Personal property** which is moving in interstate commerce through or over the territory of the State of Nevada, or **which was consigned to a warehouse**, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and **shall be exempt from taxation.** Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax

required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon **business inventories** by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories **are exempt from taxation.** The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

Sec. 2. **Total tax levy for public purposes limited. The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.**

Sec. 3. **Household goods and furniture of single household exempt from taxation.** All household goods and furniture used by a single household and owned by a member of that household are exempt from taxation.

Sec. 3[A]. **Food exempt from taxes on retail sales; exceptions.** The legislature shall provide by law for:

1. The exemption of food for human consumption from any tax upon the sale, storage, use or consumption of tangible personal property; and

2. These commodities to be excluded from any such exemption:

(a) Prepared food intended for immediate consumption.

(b) Alcoholic beverages.

Sec. 4. **Taxation of estates taxed by United States; limitations.** The

legislature may provide by law for the taxation of estates taxed by the United States, but only to the extent of any credit allowed by federal law for the payment of the state tax and only for the purpose of education, to be divided between the common schools and the state university for their support and maintenance. The combined amount of these federal and state taxes may not exceed the estate tax which would be imposed by federal law alone. If another state of the United States imposes and collects death taxes against an estate which is taxable by the State of Nevada under this section, the amount of estate tax to be collected by the State of Nevada must be reduced by the amount of the death taxes collected by the other state. Any lien for the estate tax attaches no sooner than the time when the tax is due and payable, and no restriction on possession or use of a decedent's property may be imposed by law before the time when the tax is due and payable in full under federal law. The State of Nevada shall:

1. Accept the determination by the United States of the amount of the taxable estate without further audit.

2. Accept payment of the tax in installments proportionate to any which may be permitted under federal law.

3. Impose no penalty for such a deferred payment.

4. Not charge interest on a deferred or belated payment at any rate higher than may be provided in similar circumstances by federal law.

Sec. 5. **Tax on proceeds of minerals; appropriation to counties; apportionment; assessment and taxation of mines.**

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Sec. 6. **Enactment of exemption from ad valorem tax on property or**

excise tax on retail sales.

1. The Legislature shall not enact an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail unless the Legislature finds that the exemption:

(a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

(b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

2. In enacting an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail, the Legislature shall:

(a) Ensure that the requirements for claiming the exemption are as similar as practicable for similar classes of taxpayers; and

(b) Provide a specific date on which the exemption will cease to be effective.

EXHIBIT 5

PLAN Legal Brief

Article 10, Sec 1(1) of the Nevada Constitution requires that the legislature's property taxes be equal and uniform. However, that same provision also contains an express exception for mines and mining claims which shall be assessed and taxed only as provided in Section 5 of Article 10.

Clearly the plain meaning of Art. 10, Sec 1(1) is to exclude mines from the same uniform and equal assessment as other real property in the state.

...

This holding was prior to the 1989 amendment which then allowed mining property to be valued and taxed differently. Prior to 1989, only the valuation method was different for mines.

...

The amendment put forth in Senate Joint Resolution No. 22 of the 64th Legislative Session provided a ballot question that asked: "Shall the Nevada Constitution be amended to allow the taxation of minerals at a different rate than other property and to limit other taxes upon minerals and net proceeds? It is therefore painfully clear that the 1989 amendment was intended to amend the Nevada Constitution specifically to mandate that mines be taxed differently than other real property. (Emphasis added)

Nevada Mining Association v. The Progressive Leadership Alliance of Nevada, Case No.: 10 OC 0053 1B

Excerpts from Memorandum of Points and Authorities of Defendants The Progressive Leadership Alliance of Nevada, March 8, 2010

EXHIBIT 6

List v. Whisler, 99 Nev. 133 at 140 (1983)

". . . the constitutional prohibition, as delineated in Estabrook, that one species of taxable property not pay higher taxes than other kinds of property."

C

Supreme Court of Nevada.
Governor Robert **LIST**; Nevada Tax Commission, Roy E. Nickson, Executive Director of the Department of Taxation, State of Nevada and Legislative Commission of the State of Nevada, Appellants,
v.
T.L. **WHISLER**, Maj. USMC, Retired, et al., Respondents.

No. 14440.
March 4, 1983.
Rehearing Denied June 10, 1983.

Taxpayers' suit was filed challenging certain 1981 amendments to tax statutes as violative of state and federal Constitutions. The Eighth Judicial District Court, Clark County, Howard W. Babcock, J., held that statutes violated state Constitution, and appeal was taken. The Supreme Court, Gunderson, J., held that since legislation neither applied separate tax rates to different classes nor partially exempted a particular class of property from legitimate burdens of taxation, it did not violate the uniform and equal clause of state Constitution but, rather, it provided a limited adjustment mechanism, by which prior inequitable valuations could be melded into hopefully more uniform valuation and assessment procedures established under the 1981 tax package.

Reversed.

West Headnotes

[1] **Statutes 361 ⚿1523**

361 Statutes
361VIII Validity
361k1522 Presumptions and Construction as to Validity
361k1523 k. In general. Most Cited Cases
(Formerly 361k61, 92k48(1))

All acts passed by legislature are presumed to be valid until the contrary is clearly established.

[2] **Constitutional Law 92 ⚿990**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚿996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k996 k. Clearly, positively, or unmistakably unconstitutional. Most Cited Cases
(Formerly 92k48(1))

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.

[3] **Constitutional Law 92 ⚿990**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚿996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to

Constitutionality
92k996 k. Clearly, positively, or unmistakably unconstitutional. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚷1030

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1030 k. In general. Most Cited Cases
(Formerly 92k48(1))

Presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.

[4] Statutes 361 ⚷1065

361 Statutes
361III Construction
361III(A) In General
361k1065 k. Rules, principles, maxims, and canons of construction in general. Most Cited Cases
(Formerly 361k214)

If possible, legislative intent should be determined by looking at the act itself.

[5] Taxation 371 ⚷2135

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2134 Classification of Subjects, and Uniformity as to Subjects of Same Class
371k2135 k. In general. Most Cited Cases
(Formerly 371k42(1))

Expressed intent of legislature in enacting taxation statute was not either to favor a particular class of property or to exempt a particular class of property partially from the legitimate burdens of taxation but, rather, the legislature intended to correct a method of assessment and taxation which it perceived to be unjust and potentially unconstitutional. St.1975, c. 427, § 31.

[6] Taxation 371 ⚷2135

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2134 Classification of Subjects, and Uniformity as to Subjects of Same Class
371k2135 k. In general. Most Cited Cases
(Formerly 371k42(1))

Since tax statute neither applied separate tax rates to different classes nor partially exempted a particular class of property from legitimate burdens of taxation, it did not violate uniform and equal clause of Constitution but, rather, statute provided a limited adjustment mechanism, by which prior inequitable valuations could be melded into hopefully more uniform valuation and assessment procedures established under 1981 tax package. St.1981, c. 427, § 31; Const. Art. 10, § 1.

***134 **104** D. Brian McKay, Atty. Gen., Frank Daykin, Legislative Counsel, Carson City, for appellants.

Robert J. Miller, Dist. Atty., William P. Curran, County Counsel and James M. Bartley, Chief Civil Deputy Dist. Atty., John P. Foley, Las Vegas, for respondents.

OPINION

GUNDERSON, Justice:

This appeal arises out of a taxpayers' suit challenging certain 1981 amendments to Nevada tax statutes as violative of the ***135** Nevada and United States Constitutions. In our view, such challenge lacks merit. The relevant background follows.

****105** In 1981, the Nevada Legislature undertook a comprehensive revision of the state's tax structure. The primary components of this effort were contained in Assembly Bill 369, Chapter 149, 1981 Statutes of Nevada 285; Senate Bill 69, Chapter 427, 1981 Statutes of Nevada 786; and Senate Bill 411, Chapter 150, 1981 Statutes of Nevada 305.[FN1] These three pieces of legislation, constituting the 1981 "tax package," were intended, *inter alia,* to provide property tax relief to homeowners by limiting the revenues which local government might generate through property taxes. Increases in the state retail sales tax were expected to offset any loss of revenues occa-

sioned by the limitation on property taxes.

FN1. Hereinafter, this legislation will be referred to respectively as A.B. 369, S.B. 69 and S.B. 411.

As part of the 1981 tax package, the Legislature undertook to revise the statutory method theretofore utilized in the valuation of property. Under the statutory procedure previously established, assessment was based on the "full cash value" of property. *See* 1977 Nev.Stat. 1318 (NRS 361.227). This "full cash value" had in turn been determined by resort to a series of considerations, which were given such weight as the assessor deemed appropriate. These considerations included the value of the vacant land plus the cost of improvements minus any depreciation, the market value of the property as evidenced by certain other considerations, and the value of the property estimated by capitalization of the fair economic income expectancy. As a practical matter, however, the exigencies of assessment resulted in residential property usually being appraised on the basis of its market value as determined on the basis of comparable sales. In contrast, commercial and other property was usually appraised on the basis of cost less depreciation, or on its production of income.

It seems the Legislature, having determined that existing methods of assessment and valuation had occasioned an inequitable disparity in the tax burdens imposed on property, decided as part of the 1981 tax package to replace the existing valuation system with a system based largely on the costs of improvements less applicable depreciation. *See* NRS 361.227 (effective July 1, 1983). The Legislature apparently concluded that the use of this new method of valuation would help eliminate many of the inequities generated under the old system.

There remained the problem, however, of adjusting current assessed valuations to conform to the valuations which would go into effect under the new system. Property in Nevada must ***136** be physically reappraised at least once every five years; in order to make most effective use of money and manpower, many assessors in Nevada utilize a "cyclical" or continuous reappraisal scheme whereby approximately one-fifth of a jurisdiction's taxable property is reappraised each year. *See* NRS 361.260; *Recanzone v. Nevada Tax Commission*, 92 Nev. 302, 550 P.2d 401 (1976). Due to the widespread use of cyclical reappraisals, when the Legislature amended the valuation system in 1981 a significant percentage of property in Nevada was being taxed on the basis of valuations made as early as 1976. Further, under the cyclical reappraisal system, property valued under the prior system would not be reappraised until it came up for the routine five-year reappraisal. This meant that property last appraised in 1981 would not come under the new system until its reappraisal in 1986.

In order to avoid a perceived injustice which would result if some property owners were forced to pay inequitable taxes for the five-year period required for the normal cyclical reappraisal, the 1981 tax package contained a mechanism for adjusting valuations appraised under the prior system. This "factoring system;" contained in Section 31 of S.B. 69, provided:

Sec. 31. 1. Notwithstanding the provisions of NRS 361.225, except as provided in section 32 of this act, all property subject to taxation must be assessed at 35 percent of its adjusted cash value. The adjusted cash value is calculated by multiplying the full cash value of the property by the factor shown in the following table for the class and for the fiscal year ****106** in which the property was most recently appraised:

Year of Appraisal	Factor for Residential Improvements	Factor for Other Property
1976-1977 or earlier	1.416	1.438
1977-1978	1.190	1.313
1978-1979	1.000	1.199
1979-1980	0.840	1.095
1980-1981	0.706	1.000

2. The assessment provided in subsection 1 must be

used only for the levying of taxes to be collected during the fiscal year 1981–1982 on all property to which they apply.

3. As used in this section, "residential improvement" means a single-family dwelling, a townhouse or a condominium, and its appurtenances.

As delineated in Section 31, property is to be assessed at 35 percent of its "adjusted *137 cash value." In turn, this "adjusted cash value" is to be calculated by multiplying the "full cash value" of the property in question by a "factor" established by the Legislature. As conceived by the Legislature, it seems these factors are weighted so that the valuations of property made earlier in the reappraisal cycle will be adjusted to bring them into parity with the valuation of property assessed more recently. The value given the factor applicable to any given year evidently reflects the Legislature's considered analysis of the economic dislocations and disparate valuations which had occurred during the early part of the current assessment cycle.

There are, however, two separate sets of weighted factors: one set for residential improvements, and a second set for other property. Further, it is clear that for any given year of appraisal the factors to be applied to residential improvements are less than the factors applicable to other property. It necessarily follows that for any given year of appraisal, residential improvements of a given "full cash value" will have a lower "adjusted cash value," and be subject to less tax liability, than other property of the same "full cash value."

It is this differentiation in the factoring system which is at issue in the instant appeal. Respondent taxpayers sought declaratory relief alleging, *inter alia,* that Section 31 violated the "uniform and equal" rate of assessment and taxation mandated by Article 10, Section 1 of the Nevada Constitution. After a trial, during which considerable testimony was adduced as to the Legislature's intent in enacting the tax package, and concerning the projected effects of the legislation, the district court determined that Section 31 violated Article 10, Section 1.[FN2] In so doing, we have concluded, the court erred.

FN2. The district court also determined that the unconstitutional provisions of Section 31 could not be severed from the remainder of the 1981 tax package, and that therefore the entire tax package must be stricken as unconstitutional. Upon motion of appellants, the judgment of the court was stayed pending this appeal.

[1][2][3] Our analysis of Section 31 begins with the presumption of constitutional validity which clothes statutes enacted by the Legislature. *Viale v. Foley,* 76 Nev. 149, 152, 350 P.2d 721 (1960). All acts passed by the Legislature are presumed to be valid until the contrary is clearly established. *Hard v. Depaoli et al.,* 56 Nev. 19, 26, 41 P.2d 1054 (1935). 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. *City of Reno v. County of Washoe,* 94 Nev. 327, 333–334, 580 P.2d 460 (1978); *Mengelkamp v. List,* 88 Nev. 542, 545, 501 P.2d 1032 (1972); *State of *138 Nevada v. Irwin,* 5 Nev. 111 (1869). Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional. *Ottenheimer v. Real Estate Division,* 97 Nev. 314, 315–316, 629 P.2d 1203 (1981); *Damus v. County of Clark,* 93 Nev. 512, 516, 569 P.2d 933 (1977); *Koscot Interplanetary, Inc. v. Draney,* 90 Nev. 450, 456, 530 P.2d 108 (1974).

The district court concluded the factoring system set forth in Section 31 violated Article 10, Section 1 of the Nevada Constitution. Article 10, Section 1 provides in pertinent**107 part: "The legislature shall provide by law for *a uniform and equal rate of assessment and taxation,* and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory ...." (Emphasis added.) The import of this Uniform and Equal Clause has been discussed several times by this court. In the seminal case of *State of Nevada v. Eastabrook,* 3 Nev. 173 (1867), we analyzed Article 10, Section 1 and held:

> We have no hesitation in saying that the constitutional convention, in using the language last quoted, meant to provide for at least one thing in regard to taxation: that is, that all *ad valorem* taxes should be of a uniform rate or percentage. *That one species of taxable property should not pay a higher rate of taxes than other kinds of property.* If the language we have quoted did not express this idea, then it was perfectly meaningless.

3 Nev. at 177 (emphasis added). The interpretation of the Uniform and Equal Clause established in *Eastabrook* has been approved by this court many times. *See United States v. State ex rel. Beko,* 88 Nev. 76, 86–87,

493 P.2d 1324 (1972); *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 166, 390 P.2d 225 (1964); *State of Nevada v. Kruttschnitt*, 4 Nev. 178, 200 (1868). Further, other jurisdictions having occasion to address virtually identical constitutional provisions have reached similar results. *See State ex rel. Stephan v. Martin*, 608 P.2d 880, 886 (Kan.1980); *Wheeler v. Weightman*, 96 Kan. 50, 149 P. 977 (Kan.1915). Thus, faced with the weight of authority interpreting Article 10, Section 1, the question before this court is whether Section 31 requires one species of taxable property to pay a higher rate of taxes than other kinds of property.

[4] In addressing this question, the crucial inquiry is the legislative intent and purpose for enacting Section 31. It is well-established that judicial construction of legislation should be ***139** based on legislative intent, and legislative intent is to be determined by looking at the whole act, its object, scope and intent. If possible, legislative intent should be determined by looking at the act itself. *Escalle v. Mark*, 43 Nev. 172, 176, 183 P. 387 (1919); *State v. Brodigan*, 37 Nev. 245, 256, 141 P. 988 (1914) (Talbot, C.J., concurring); *State v. Hamilton*, 33 Nev. 418, 421–422, 111 P. 1026 (1910); *In re Primary Ballots*, 33 Nev. 125, 135, 126 P. 643 (1910); *State of Nevada v. Toll-Road Co.*, 10 Nev. 155, 160 (1875).

[5] In the instant case, the intent of the Legislature in enacting Section 31 is unequivocally expressed in S.B. 69. Section 33 of S.B. 69 provides:

> Sec. 33. The legislature finds that:
>
> 1. The factors prescribed in section 31 of this act for the respective years of appraisal *have the approximate effect of placing property appraised before the fiscal year 1980–1981 on a parity with property appraised during that fiscal year, and the respective classes of real property separately specified in that section on a parity with one another.*
>
> 2. Such an approximation is necessary in order to permit the orderly collection of taxes ad valorem during the fiscal year 1981–1982.
>
> 3. Each of the classes of property excluded from the operation of section 31 of this act is assessed pursuant to NRS in such a manner that no adjustment is required to place all property within that class on a parity.

(Emphasis added.) Accordingly, it seems the expressed intent of the Legislature in enacting Section 31 was not either to favor a particular class of property or to exempt a particular class of property partially from the legitimate burdens of taxation. Rather, the Legislature intended to correct a method of assessment and taxation which it perceived to be unjust and potentially unconstitutional. As previously noted, legislative hearings and debate on the 1981 tax package established that residential property was then usually appraised on the basis of comparable sales, while commercial property was appraised primarily on the basis of cost less depreciation or on the property's production of income. *See* 1977 Nev.Stat. ****108** 1318 (NRS 361.227). The Legislature came to the conclusion that, due to the economic forces at work over the years, this method of valuation and appraisal had placed an inordinate and undesirable burden on the residential property taxpayer. By the Legislature's own declaration, the factoring system contained in ***140** Section 31 represents an attempt to rectify this situation and to achieve parity in valuation between residential improvements and other property. The question remains, however, whether the factoring system contained in S.B. 69 nonetheless violates **the constitutional prohibition, as delineated in *Eastabrook*, that one species of taxable property not pay higher taxes than other kinds of property.**

[6] In this regard, we initially note that Section 31 does not expressly impose two different *rates* of taxation. Both residential improvements and other property are to be taxed at the same rate: 35 percent of "adjusted cash value." If the Legislature had flatly mandated that residential property be taxed at a lower rate than other property, and had provided no rationale for such a disparity of treatment, prior case authority might well compel the conclusion that such legislation was unconstitutional. For example, in *Boyne v. State ex rel. Dickerson*, 80 Nev. at 160, 390 P.2d 225, this court examined a statute which permitted the owner of land used exclusively for agricultural purposes to contract with the county assessor for assessment and payment of taxes based on the "full cash value" of the property for agricultural purposes, rather than on its value for other purposes. The avowed purpose of this statute was to shift or defer the burden of increased taxation on agricultural property caused by increased population pressures and the growth of urban areas. Nonetheless, we found the statute unconstitutional, because such a practice gave owners of agricultural property the very type of distinct tax advantage prohibited by Article 10, Section 1. Of like import is *State ex rel. Stephan v. Martin*, 608 P.2d at 880, which involved a flat, across-the-board reduction of 20 percent in the appraised

value of farm machinery and equipment, in order to avoid a "severe economic crisis" confronting farmers and ranchers. This partial exemption was held to violate the Equal and Uniform Clause of the Kansas Constitution. In contrast, on its face, the instant legislation neither applies separate tax rates to different classes nor partially exempts a particular class of property from the legitimate burdens of taxation.

It is true that Section 31 temporarily establishes two separate sets of factors to be used in calculating the "adjusted cash value" on which tax liability is based. Furthermore, for any given year of assessment, the factor for residential improvements is significantly less than the corresponding factor for other property. Finally, as previously noted, for any given year, a residential improvement with a "full cash value" identical to a given piece of non-residential property will thus derive ***141** a lower "adjusted cash value" than the non-residential property, and will therefore obtain a reduced assessment. However, while the district court concluded this procedure resulted in a nonuniform and unequal method of assessment and taxation, we do not agree with this characterization.

To the contrary, given the existing disparities—caused by the prior use of cost minus depreciation or income production valuation for commercial property, as opposed to comparable sales valuation for residential property—it appears to us that the factoring system contained in Section 31 simply reflects the Legislature's considered judgment that residential improvements have been over-valued and commercial property under-valued during recent assessments. The factoring system contained in Section 31 thus appears to represent a mechanism by which previously faulty valuations will be adjusted, to the best of the Legislature's ability, thereby yielding the equal and uniform taxation required by our Constitution.

In reaching this conclusion, we find it significant that S.B. 69 limits the use of the factoring system to the brief transitional period required to "phase out" the valuations made under the prior system and ****109** "phase in" the new valuations made pursuant to the 1981 tax package. Effective July 1, 1983, all property subject to taxation must be assessed at 35 percent of its taxable value. *See* NRS 361.225. Further, effective July 1, 1983, taxable value of property is to be determined under the new method of valuation which emphasizes cost minus depreciation. *See* NRS 361.227. Finally, subsection 2 of Section 31 provides that the assessment made under the factoring system "must be used only for the levying of taxes to be collected during the fiscal year 1981–1982 on all property to which they apply." Thus, it does not appear that Section 31 violates the constitutional prohibition, as delineated in *Eastabrook,* against taxing different species of property at different rates. Instead, it appears that Section 31 provides a limited adjustment mechanism, by which prior inequitable valuations may be melded into the hopefully more uniform valuation and assessment procedures established under the 1981 tax package.

Accordingly, because the factoring system contained in Section 31 of S.B. 69 does not appear to offend the Equal and Uniform Clause contained in Article 10, Section 1 of the Nevada Constitution, we need not consider whether Section 31 would be severable from the remainder of the 1981 tax package. We note, however, that respondents have advanced a number of additional constitutional challenges to the 1981 tax package, contending that even if the district court erred in regard to Section 31, its judgment was nonetheless correct and ***142** should be sustained. *See Hotel Riviera, Inc. v. Torres,* 97 Nev. 399, 632 P.2d 1155 (1981); *Sievers v. County Treas., Douglas Co.,* 96 Nev. 819, 618 P.2d 1221 (1980) (a correct judgment should not be reversed simply because it is based on a wrong reason). We have therefore examined respondents' additional arguments, and have found them to be without merit.

Accordingly, the judgment of the district court is reversed.

MANOUKIAN, C.J., and SPRINGER, MOWBRAY and STEFFEN, JJ., concur.

Nev.,1983.
List v. Whisler
99 Nev. 133, 660 P.2d 104

END OF DOCUMENT

EXHIBIT 7

Sun City Summerlin Community Association v. State, 113 Nev. 835 at 841 (1997)

"That one species of taxable property should not pay a higher rate of taxes than other kinds of property."

Supreme Court of Nevada.
SUN CITY SUMMERLIN COMMUNITY ASSOCIATION, A Nevada Non-Profit Corporation, Appellant,
v.
The STATE of Nevada, By and Through its DEPARTMENT OF TAXATION; County of Clark, Nevada; and Mark W. Schofield, Clark County Assessor, Respondents.

No. 26419.
Aug. 28, 1997.

Community association for planned residential community appealed county assessor's tax assessments of association's properties which were used as common areas. County board of equalization upheld assessments and association appealed. State Board of Equalization denied appeal and association petitioned for judicial review. The Eighth Judicial District Court, Clark County, Jeffrey D. Sobel, J., denied petition and association appealed. The Supreme Court held that: (1) property tax statute prohibiting separate taxation or assessment of condominium's or planned community's common elements applied to association's properties; (2) statute was unconstitutional; (3) properties retained some taxable value despite their legal restrictions; (4) taxation of individual units of community and common areas was not double taxation; and (5) assessor was required to consider restrictions on properties.

Reversed and remanded.

West Headnotes

[1] **Taxation 371 ⚿2478**

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Property tax statute requiring each unit of condominium or planned community to be separately taxed and prohibiting separate taxation or assessment of common elements for which declarant has reserved no developmental rights if there is any unit's owner other than declarant does not require that all units have owners other than declarant. N.R.S. 116.1105, subd. 2(b).

[2] **Taxation 371 ⚿2478**

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Property tax statute which prohibited separate taxation or assessment of condominium's or planned community's common elements for which declarant has reserved no developmental rights applied to common areas in planned residential community, even though declarant intended to add additional land to community and to subdivide that land, where declarant did not reserve developmental rights for existing common areas, but conveyed common areas to community association. N.R.S. 116.1105, subd. 2(b).

[3] **Taxation 371 ⚿2126**

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2126 k. Mode or Form of Discrimination in General. Most Cited Cases
(Formerly 371k40(6))

Taxation 371 ⚷2461

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2461 k. Statutory Provisions. Most Cited Cases
(Formerly 371k327)

Statute which effectively permitted taxation of common elements in condominiums, in which unit owners hold undivided interests in common elements, but precluded taxation of common elements in planned communities, in which community associations owned common elements, violated constitutional prescription for uniform and equal rate of assessment and taxation of property. Const. Art. 10, § 1; N.R.S. 116.1105, subd. 2(b).

[4] Constitutional Law 92 ⚷990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases
(Formerly 92k48(1))

Constitutional Law 92 ⚷996

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k996 k. Clearly, Positively, or Unmistakably Unconstitutional. Most Cited Cases
(Formerly 92k48(1))

Statutes enacted by legislature carry presumption of constitutional validity, and those attacking statute must clearly show that it is unconstitutional.

[5] Taxation 371 ⚷2728

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2724 Weight and Sufficiency of Evidence
371k2728 k. Valuation. Most Cited Cases
(Formerly 371k485(3))

Taxpayer challenging property tax assessment can satisfy burden of showing clear and satisfactory evidence that county assessor's valuation is unjust and inequitable by showing that assessor applied fundamentally wrong principle or refused to exercise his best judgment or that assessment is so excessive as to imply fraud and bad faith. N.R.S. 361.430.

[6] Taxation 371 ⚷2514

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2512 Real Property in General
371k2514 k. Matters Considered and Methods of Valuation in General. Most Cited Cases
(Formerly 371k348(2.1))

Restrictions on use and alienability of land are relevant to valuation of land and in some circumstances may be extreme enough to render land valueless for tax purposes.

[7] Taxation 371 ⚷2521

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2521 k. In General. Most Cited Cases
(Formerly 371k348.1(1))

Assuming that properties owned by community association for planned residential community were required to be run as nonprofit enterprises for sole benefit of community residents for 20 years, properties retained some taxable value, where association

had power to sell properties if majority of its members assented and there was no restriction on properties' use after 20--year period expired.

[8] **Taxation 371 ⚿2150**

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)5 Double Taxation
371k2150 k. In General. Most Cited Cases
(Formerly 371k47(1))

Taxation of both planned residential community's individual units and golf courses and recreation centers, which were owned by community association for benefit of community, did not constitute unconstitutional double taxation, even though golf courses and recreation centers enhanced value of and increased taxes on individual units.

[9] **Taxation 371 ⚿2478**

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Membership in community association for planned residential community and holding of easements for access to and use of common areas of community did not constitute ownership of common areas for taxation purposes. N.R.S. 116.110318, subd. 2.

[10] **Taxation 371 ⚿2521**

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2521 k. In General. Most Cited Cases
(Formerly 371k348.1(1))

Legal restrictions on properties owned by community association for planned residential community which required properties to be run as nonprofit enterprises for sole benefit of community residents for 20 years were relevant to properties' valuation, and thus, county assessor was required to consider restrictions in making valuations, even though statute did not expressly require that legal restrictions be considered in appraising improved land. N.R.S. 361.227, subd. 1(a)(2).

**235 *835 McDonald, Carano, Wilson, McCune, Bergin, Frankovich & Hicks and Andrew P. Gordon, Las Vegas, for Appellant.

Frankie Sue Del Papa, Attorney General, and Norman J. Azevedo and Harry J. Schlegelmilch, Deputy Attorneys General, Carson City; Stewart L. Bell, District Attorney, Zev E. Kaplan, Deputy District Attorney, Clark County, for Respondents.

Woodburn & Wedge, Las Vegas, for Amicus Curiae The Community Association Institute.

*837 *OPINION*

PER CURIAM:

Sun City Summerlin (Sun City) is a master-planned adult residential community in Las Vegas developed by Del Webb Communities, Inc. (Del Webb). Del Webb developed two golf courses and two recreation centers (the properties) as a part of Sun City and conveyed them to appellant Sun City Summerlin Community Association (the Association), a non-profit corporation. The Clark County Assessor's Office (the county assessor) assessed real property taxes totaling $259,648.11 against the properties. The Association appealed the assessments to the Clark County Board of Equalization, which upheld the assessments. The Association appealed the decision to the State Board of Equalization (the State Board), which denied the appeal. The Association then petitioned for judicial review, and the district court denied the petition.

We conclude that NRS 116.1105(2)(b) applies to this case but is unconstitutional insofar as it precludes taxation of common elements in a planned community. We further conclude that restrictions on the use

of the properties are relevant to their valuation and that the county assessor erred in disregarding the restrictions in valuing the properties.

FACTS

The following facts were presented to the State Board. Sun City is a master-planned adult residential community in Las Vegas developed by Del Webb. Del Webb developed two golf courses and two recreation centers as a part of Sun City and conveyed them to the Association. Del Webb recoups the cost of developing these amenities through a higher sale price for homes in Sun City. Owners of residences in Sun City are Class A members of the Association and must pay an annual fee of $320.00 to the Association. Class A members who wish to play golf pay an additional annual fee of $600.00 and a fee of $4.00 per round of golf. Del Webb is a Class B member of the Association. The Association's bylaws provide that its board of directors can sell Association property worth more than a specified value ****236** only with the assent of a majority of its members.

The four properties were conveyed to the Association in 1990 and 1992 and are encumbered with certain use restrictions. All four deeds reserve for Del Webb, for a period of twenty years after conveyance, the right to prior approval of the design of any ***838** improvements to the properties. The golf course properties shall be used only as golf courses for a period of twenty years after conveyance. The Association asserts in its brief to this court that all four properties must be run as non-profit enterprises for the sole benefit of Sun City residents for twenty years. However, in the record before this court, only the deed for one recreation center states all these restrictions. Moreover, Jon Donnell, the treasurer for the Association and a vice president of Del Webb, informed the State Board that the Association supplements its income "by permitting some nonresident golf play [at] about $75 a round." The Association gave evidence that the golf courses, pro shops, grill, snack bar, and recreation centers on the properties operate at an overall loss.

The Association presented evidence that due to the amenities provided by the properties, homes in Sun City sell for higher prices than comparable homes elsewhere without such amenities and that Sun City homes were assessed $11.00 per square foot higher than comparable homes. According to the Association, this additional assessment amounted to $83,259,000.00 for all Sun City homes. The county assessor valued the four properties in question at a total of $21,657,281.00.

Bill Chambers of the county assessor's office stated that in addition to the golf courses and recreation areas, other factors accounted for the higher value of Sun City homes: Sun City is an affluent retirement community which has security, shopping centers, and nearby medical facilities. Chambers said that to help establish the taxable value of Sun City lots, the county assessor's office had compared the cost of Sun City interior lots with those at a development across the street, Belair Estates. He also said that although Sun City homes were production and Belair Estates homes were semi-custom, the quality of construction was similar. According to Chambers, the county assessor had also compared golf course frontage lots at Sun City with those at Canyon Gate development and concluded that the valuation of Sun City was appropriate given these comparisons.

Tim Greene stated for the Association that Sun City had public streets while Canyon Gate was a more exclusive community with security gates, yet comparable Sun City homes were still higher valued. Donnell, Del Webb vice president, stressed that the county assessor compared Sun City production homes with semi-custom and custom homes, not other production housing developments, which Donnell considered to be Sun City's competition.

A member of the State Board asked Chambers, "what if the developer had recorded his maps with an undivided interest in the common areas? How would you handle it then? It would be reflected in the price of the individual home, wouldn't it?" Chambers answered: "Yes, it would be like a condo."

***839** *DISCUSSION*

Whether NRS 116.1105(2) applies to this case

NRS 361.420(4)(b) provides that a property owner who has protested his or her property taxes and been denied relief by the State Board may sue in court on the ground that "the property is exempt from taxation under the provisions of the revenue or tax laws of the state." NRS 116.1105(2) provides:

In a condominium or planned community:

(a) If there is any unit's owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit's owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a **237 declarant has reserved no developmental rights.

The Association contends that NRS 116.1105(2)(b) prohibits separate assessment and taxation of the properties. Respondent Department of Taxation (the Department) argues that this statute does not apply to this case.[FN1]

FN1. The Department also contends that even if the statute applies, it simply provides a "billing mechanism" that does not preclude taxing the properties but only requires billing the individual homeowners for the taxes rather than the Association. We reject this contention because we do not see how NRS 116.1105(2)(b) can preclude "separate tax or assessment" against common elements and yet allow billing of unit owners for taxes on the common elements.

[1][2] Del Webb is the declarant here. *See* NRS 116.110335. The Department argues that as long as Del Webb owns any units at Sun City and is a member of the Association, NRS Chapter 116 is inapplicable. By its own language, however, NRS 116.1105(2)(b) applies "[i]f there is *any* unit's owner other than a declarant." (Emphasis added.) It does not require that all units have owners other than a declarant. The Department also asserts that because Del Webb intends to add additional land to Sun City and subdivide it, Del Webb has reserved developmental rights which place Sun City outside the purview of NRS 116.1105(2)(b). *See* NRS 116.11034.[FN2] However, NRS 116.1105(2)(b) provides that "no *840 separate tax or assessment may be rendered against any *common elements for which* a declarant has reserved no developmental rights." (Emphasis added.) Del Webb has not reserved developmental rights for the common elements in question here. It conveyed the properties to the Association and reserved no right to create units within the properties. Even if Del Webb can add land to Sun City and create additional units, these do not constitute developmental rights in the golf courses or recreation centers. Therefore, Del Webb's remaining interests in Sun City do not preclude application of NRS 116.1105(2) to this case.[FN3]

FN2. NRS 116.11034 provides that developmental rights are rights to:

1. Add real estate to a common-interest community;

2. Create units, common elements or limited common elements within a common-interest community;

3. Subdivide units or convert units into common elements; or

4. Withdraw real estate from a common-interest community.

FN3. Even if Del Web held developmental rights in the common elements, the State would then be required to assess taxes against Del Webb, not the Association. NRS 116.1105(3).

Whether NRS 116.1105(2)(b) is constitutional as applied to planned communities

[3] NRS 116.1105(2)(a) contemplates a situation where "each unit that has been created, *together with its interest in the common elements,* constitutes for all purposes a separate parcel of real estate." (Emphasis added.) In such a situation, "each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements." NRS 116.1105(2)(b). However, under the statutory scheme set forth in NRS Chapter 116, units in planned communities, unlike condominiums, include no taxable interest in common elements.

The parties agree that Sun City is a "planned community." *See* NRS 116.110368, 116.110323. Individual Sun City units do not include ownership interests in the golf courses and recreation centers; rather, the Association of Sun City unit owners owns these common elements. NRS 116.1105(2) expressly applies to both condominiums and planned communi-

ties. But these two types of common-interest community, by statutory definition, exhibit distinctly different ownership of common elements. In a condominium, "the undivided interests in the common elements are vested in the units' owners." NRS 116.110325. In a planned community, common elements are real estate, other than a unit, "owned or leased by the association." NRS 116.110318(2). Thus, NRS 116.1105(2)(b) permits taxation of common elements in condominiums, where unit owners hold undivided interests in the elements, but not in planned communities such as Sun City, where associations own the elements, ****238** and the county assessor is precluded from taxing the common elements directly.

[4] The question before us is whether this disparate taxation of ***841** properties is constitutional. Statutes enacted by the Legislature carry a presumption of constitutional validity, and those attacking a statute must clearly show that it is unconstitutional. *List v. Whisler*, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983).

Article ten, section one of the Constitution of the State of Nevada requires the Legislature to "provide by law for a uniform and equal rate of assessment and taxation" and "prescribe such regulations as shall secure a just valuation for taxation of all property." Early in its history, this court explained that this constitutional provision requires "that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property." *State of Nevada v. Eastabrook*, 3 Nev. 173, 177 (1867). The court concluded that a statute providing for a different tax rate for the products of mines was unconstitutional and void: "The legislature could neither make the tax greater nor less on the products of mines than on other property." *Id.* at 179. This court has reaffirmed its holding in *Eastabrook* many times. *See List*, 99 Nev. at 138, 660 P.2d at 107.

In *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 390 P.2d 225 (1964), this court considered a statute which allowed assessment of land used for agricultural purposes based on its value for such use, rather than on its value for other purposes-the method for assessing other lands. This court affirmed the district court's conclusion that the statute was unconstitutional because it gave the owners of agricultural property a distinct tax advantage over other landowners. *Id.* at 166-67, 390 P.2d at 228-29.

Insofar as NRS 116.1105(2)(b) precludes taxation of common elements in planned communities, we conclude that it is void for violating the prescription "for a uniform and equal rate of assessment and taxation" of all property set forth in article ten, section one of our state constitution.

Other issues regarding the assessment and taxation of the properties

The Association offers other reasons, in addition to NRS 116.1105(2)(b), for assessing no taxes against the properties. It argues that the tax assessment was improper because the deed restrictions limit the properties' marketability and largely eliminate their value. It also argues that because the properties enhance the value of and increase the taxes on Sun City units and because unit owners hold easements in the properties, taxation of both the properties and the units amounts to unconstitutional double taxation.

[5] NRS 361.420(4)(e) provides that a person assessed may sue on ***842** the ground that "the assessment is out of proportion to and above the taxable cash value of the property assessed." The plaintiff has the burden of proof "to show by clear and satisfactory evidence that any valuation established by ... the county assessor ... is unjust and inequitable." NRS 361.430. A plaintiff can satisfy this burden by showing that the assessor applied a fundamentally wrong principle or refused to exercise his or her best judgment or that the assessment is so excessive as to imply fraud and bad faith. *Imperial Palace v. State, Dep't Taxation*, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992).

[6][7] Both parties have cited a number of cases regarding the effect of zoning and deed restrictions on the value of land. *See, e.g., Recreation Centers v. Maricopa County*, 162 Ariz. 281, 782 P.2d 1174, 1176 (1989); *Lake County Bd. v. Property Tax Appeal Bd.*, 91 Ill.App.3d 117, 46 Ill.Dec. 451, 414 N.E.2d 173 (1980); *Supervisor of Assessments v. Bay Ridge Prop., Inc.*, 270 Md. 216, 310 A.2d 773 (1973); *Dept. of Revenue v. Grouse Mt. Development*, 218 Mont. 353, 707 P.2d 1113 (1985); *Locke Lake Colony v. Town of Barnstead*, 126 N.H. 136, 489 A.2d 120 (1985); *Grasser v. Graham*, 97 Misc.2d 417, 411 N.Y.S.2d 836 (Sup.Ct.1978); *Brooks Re-*

sources Corp. v. Dept. of Revenue, 286 Or. 499, 595 P.2d 1358 (1979); *Tualatin Development Co. v. Department of Revenue*, 256 Or. 323, 473 P.2d 660 (1970); *Lake Monticello Owners' Ass'n v. Ritter*, 229 Va. 205, 327 S.E.2d 117, 119 (1985); ****239***Sahalee Country Club v. Bd. of Tax App.*, 108 Wash.2d 26, 735 P.2d 1320 (1987); *Twin Lakes Golf and Country Club v. King County*, 87 Wash.2d 1, 548 P.2d 538 (1976). We distill from these cases the proposition that restrictions on the use and alienability of land are relevant to valuation of land and in some circumstances may be extreme enough to render the land valueless for tax purposes. We conclude that the restrictions in the instant case are not that extreme. Even assuming that all four properties must be run as non-profit enterprises for the sole benefit of Sun City residents for twenty years, they appear to retain some taxable value. The Association has the power to sell the properties in question if a majority of its members assent. Someone might be willing to buy the properties since there is no restriction on their use after the twenty-year period expires. Under the approach taken by the Arizona Supreme Court in *Recreation Centers*, even a non-profit restriction on a property's use is irrelevant to its valuation for tax purposes. *Recreation Centers*, 782 P.2d at 1181-83. Furthermore, the Association did not show that the golf courses or other facilities could not be run at a profit in the future. *See Brooks*, 595 P.2d at 1360 (taxpayer failed to show unprofitable golf course had no value when losses were decreasing and taxpayer offered no expert testimony that course would continue to be unprofitable).

[8] ***843** In regard to the issue of double taxation, the correct view is that there is no necessary correlation between one property's increase in value and another property's decrease in value. Homes located near a golf course can enjoy enhanced value from that proximity without impairing the value of the golf course itself. Certainly, a separately owned, for-profit golf course which enhances the value of surrounding homes could not avoid taxes simply because it has increased the value of and the taxes paid on those homes. Therefore, the focus should be simply on the subject property's value, and neighboring property values are relevant only insofar as they affect the subject property's value. *See Sahalee*, 735 P.2d at 1323-24; *Lake County*, 46 Ill.Dec. at 454, 414 N.E.2d at 176; *cf. Lake Monticello*, 327 S.E.2d at 119.

The Association contends that taxation of the properties constitutes double taxation for other reasons. The Association argues that because its members are automatically and mandatorily made members of the Association, and the Association owns the common elements, that such membership constitutes an ownership interest in the common elements. It also claims that Sun City residents have an ownership interest in the properties pursuant to NRS 116.2116(2), which provides that in a planned community,

> the units' owners have an easement:
>
> (a) In the common elements for purposes of access to their units; and
>
> (b) To use the common elements and all real estate that must become common elements ... for all other purposes.

[9] This contention has no merit. The Association offers no authority for the proposition that membership in the Association or easements for access to and use of property constitute ownership of that property, nor does it explain how this proposition is to be reconciled with NRS 116.110318(2), which states that common elements in a planned community are "owned or leased by the association." [FN4]

> FN4. Even if we were to agree that membership in the Association constituted an ownership interest in the common elements, it is clear from the double taxation discussion, *supra*, that such an interest was not taxed through the higher value of the homes.

[10] As discussed above, however, these easements are relevant to accurate valuation of the properties. Although the restrictions imposed on the properties do not render them valueless, the restrictions are relevant to valuation of the properties. The record indicates that the county assessor did not consider the restrictions in making its valuations, and the Department argues that under ***844** NRS 361.227(1)(a)(2) the assessor need not and should not consider such restrictions in valuing improved land. We reject this argument.

NRS 361.227(1)(a)(1) expressly provides that vacant land be appraised by considering *inter alia* "any legal ... restrictions" upon **240 the land's uses, while NRS 361.227(1)(a)(2) does not expressly provide that legal restrictions be considered in appraising improved land. The Department seems to argue that since subsection (1)(a)(2) does not mention legal restrictions upon use, such restrictions are irrelevant in regard to improved land. This view does not make sense. NRS 361.227(1)(a)(2) provides that improved land be appraised "consistently with the use to which the improvements are being put." We conclude that restrictions on use are an integral aspect of the use to which improved land is put and are necessarily relevant to any valuation of the land. Therefore, we conclude that the county assessor applied a fundamentally wrong principle in disregarding the use restrictions in valuing the properties.

CONCLUSION

NRS 116.1105(2)(b) is unconstitutional and void insofar as it precludes the taxation of common elements in a planned community. Consideration of the restrictions which the properties are subject to is necessary for accurate valuation of the properties. We therefore reverse the district court's order and remand this case to that court for further proceedings consistent with this opinion.[FN5]

FN5. The Honorable A. William Maupin, Justice, did not participate in the decision of this matter.

SHEARING, C.J., SPRINGER, ROSE, and YOUNG, JJ., concur.

Nev.,1997.
Sun City Summerlin Community Ass'n v. State By and Through Dept. of Taxation
113 Nev. 835, 944 P.2d 234

END OF DOCUMENT

EXHIBIT 8

State v. Virginia & T.R. CO., 23 Nev. 283 (1896)

". . . the term 'full cash value' means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor."

C

Supreme Court of Nevada.
STATE
v.
VIRGINIA & T. R. CO. et al.

NO. 1,473.
Nov. 17, 1896.

Appeal from district court, Washoe county; A. E. Cheney, Judge.

Action by the state of Nevada against the Virginia & Truckee Railroad Company and others to recover taxes. From a judgment for plaintiff, and from an order refusing a new trial, defendants appeal. Reversed.

Action to recover taxes due for the year 1895, amounting to $5,369.10. The defendant made the statement to the assessor required by the statute, valuing its railroad in Washoe county at $131,800. This the assessor refused to accept, but assessed it at the sum of $254,321. Upon complaint by the defendant to the board of equalization of Washoe county, this assessment was sustained. Upon the taxes becoming due, the defendant tendered, in full payment thereof, $3,173.86, which was refused by the tax collector. To the action, the defendant made answer that the actual cash value of its road in Washoe county was but $131,800. The case was tried before a jury, and a verdict rendered in favor of the state, finding the value of the property to be the same as fixed by the assessor. From the judgment entered upon this verdict, and an order refusing a new trial, the defendant appeals.

West Headnotes

Appeal and Error 30 ⚿1002

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)2 Verdicts
30k1002 k. On Conflicting Evidence. Most Cited Cases

The rule that a verdict on conflicting evidence will not be disturbed relates only to a substantial conflict.

Taxation 371 ⚿2560

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2560 k. Railroads. Most Cited Cases
(Formerly 371k390(2))

Under St. 1891, pp. 137, 138, providing that all property shall be assessed at its actual cash value, and that the term "cash value" means the amount at which the property would be appraised if taken in payment of a just debt from a solvent debtor, the value of a railroad for the purpose of taxation must be determined mainly by its net earnings, capitalized at the current rate of interest, taking into consideration any immediate prospect of an increase or decrease in the earning capacity of the road.

Taxation 371 ⚿2560

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2560 k. Railroads. Most Cited Cases
(Formerly 371k390(2))

In estimating the net earnings of a railroad as a basis for ascertaining the value of the road for the purpose of taxation, the cost of replacing a bridge should be deducted as a part of the expense of that year.

*723 W. E. F. Deal, for appellants.

F. H. Norcross, Dist. Atty., Torreyson & Summerfield, and Robt. M. Beatty, Atty. Gen., for the State.

BIGELOW, C. J. (after stating the facts).

By the act of March 9, 1895 (St. 1895, p. 39), section 52 of the revenue law was amended so as to permit a defendant sued for delinquent taxes to answer "that the assessment is out of proportion to and above the actual cash value of the property assessed." Prior to that amendment this defense could not have been made. State v. Central Pac. R. Co., 21 Nev. 172, 178, 26 Pac. 225, 1109. The defendant answered under this amendment, but the jury found against it; and the question presented upon the appeal is, what was the actual cash value of the defendant's road in Washoe county?

The respondent first contends that the evidence as to value is conflicting, and that, consequently, this court cannot interfere with the verdict. That is undoubtedly the general rule, but for it to have this effect there must be a substantial conflict. It is not sufficient that there is some evidence supporting the verdict, if it is so weak and inconclusive as not to raise a substantial conflict with that produced against it. Hayne, New Trial & App. § 288; Watt v. Railroad Co., 44 Pac. 423, 23 Nev. 154. We think that is the case here. While there is some evidence in support of the verdict, it is so weak, and is so completely upset by the undisputed facts, that it does not raise a substantial conflict as to the true value of the road. Const. Nev. art. 10, provides that all property, both real and personal, shall be assessed and taxed at an equal and uniform rate, and shall receive a just valuation. By St. 1893, p. 110, § 3, it is provided: "In ascertaining, assessing and fixing the value of any railroad for taxation the assessor shall assess it the same as other property, and shall consider, treat and assess the portion thereof at its value within his county as an integral part of a complete, continuous and operated line of railroad, and not as so much land covered by the right of way merely, nor as so many miles of track consisting of iron rails, ties and couplings." By St. 1891, pp. 137, 138, it is directed that all property shall be assessed at its actual cash value, and that the "term §full cash value' means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor." A railroad, then, the same as every other class of property, is to be assessed at its true cash value,-at such an amount as it would be appraised if taken in payment of a just debt due from a solvent debtor. But this does not necessarily mean that the same rules and principles are to be applied to all the different kinds in determining what their true cash value is. The true value of each class is to be determined by evidence applicable to that class. Wherever property has a well-defined market value, which is usually the case with personal property, with town and farm property, the market value is usually the best criterion of its value for purposes of taxation. It is fair *724 to presume that property to be taken in payment of a just debt from a solvent debtor would be appraised at what it is reasonably worth in the market,-at what it would probably bring. So one rule is really the equivalent of the other. But there are many other kinds of property to which this test would be entirely inapplicable. It cannot be said, although sometimes bought and sold, that they have a market value. Such, for instance, is a water ditch, a salt marsh, a borax field, or a mine of any kind. A toll road is another instance. Take, for example, the famous "Geiger Grade," which must have cost many thousands of dollars, and have been, at one time, a wonderfully productive piece of property, but which now would probably not pay the wages of a toll keeper. The market cannot be appealed to fix a value upon such property, but its value may be and must be fixed by other obvious considerations. A railroad comes within this class. Railroads are bought and sold so seldom, and the value of each road depends so entirely upon its surroundings, that in determining the amount at which such property would be appraised if taken in payment of a debt we must resort to other principles. Railroads are usually constructed and operated for profit. They are not valued, as men sometimes value a beautiful home, a horse, or a diamond, for the pleasure that comes from their ownership, but for the returns that can be obtained from them as a business investment. Neither are they usually held for speculative purposes, as much other property, particularly unimproved lands, town and city property, is so often held. The value of a railroad is generally strictly prosaic and utilitarian. To obtain any return from it, either present or prospective, a railroad must be operated. It cannot lie idle, and at the same time increase in value through the natural increase of population and business. As it must be operated, expense must be constantly incurred, and the result is that its true value as a railroad depends very largely-almost entirely-upon what its net income can be expected to be. It is reasonable to suppose that own best advantage, -that they

will obtain all the income possible, and keep the expense of operation as low as possible. This should certainly be the presumption in the absence of a showing to the contrary; and it follows, where a road has been operated for a number of years, that what it has done in the past is a very good criterion of what it may be expected to do, under the same conditions, in the future. Then, after ascertaining this net return, it is necessary to take into consideration the surrounding conditions, which also cut some figure in the problem, such as the condition of the road, in order to determine whether the expense of keeping it in repair will be greater or less than in the past, and the condition of the country tributary to the road, in order to form a judgment of whether its business is likely to increase or decrease, or remain stationary. In fact, the true cash value of the property-its value for taxation-should be determined by the same matters that would be considered by one who wished to purchase and who was simply endeavoring to ascertain what the road was worth.

In the case of State v. Central Pac. R. Co., 10 Nev. 47, this whole matter was very thoroughly considered by as able a bench as it has ever been the good fortune of this state to have. From the opinion by Beatty, J., we make the following short extract: "To determine the value of a railroad, then, the very first inquiry is as to its actual cost. That, prima facie, is its value. But if it appears that the actual cost was in excess of the necessary cost, the necessary cost is its proper standard. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired, by competition or other cause, or, in short, if the utility of the road is not equal to its cost, then its value is less than its cost, and must be determined by reference to its utility alone." It is claimed, however, that what was said in that case as to the correct rule for fixing the valuation of a railroad was dictum. We do not so regard it, as the defense in that case was that the road had been fraudulently overvalued. In considering this defense, the first point to be determined was whether there had been any overvaluation at all. Upon its theory of how a road should be valued, the defendant had established that there had, and this brought the question of what was a correct theory squarely before the court. But no matter. Whether what was there said was necessary to the decision of that case or not, we regard it as a substantially correct statement of the law, and we find it supported by many other cases. Thus, in People v. Keator, 67 How. Prac. 278, the court held as follows: "In complying with this provision of the law, as a railroad property cannot, as a dwelling, have any fancy value, by reason of its location or the expenditure thereon of large sums of money which would conduce to the comfort of the owner, it is evident that the assessors, in fixing its value, must be very largely controlled by its ability to earn money, and the productiveness of its use for the purposes of a railroad. As an original question, it would seem to be reasonably clear that the value of a railroad property must almost entirely depend upon its capacity to earn money for its owners, and that, therefore, no creditor would receive from a solvent debtor, in payment of his debt, railroad property at a greater price than that which would be a fair one based upon its earning capacity." In *725People v. Weaver, 67 How. Prac. 479, a case involving the value of a bridge, the same court said: "In determining the value of the property of the relator in the mode which the statute directs, it is an evidently sound proposition that the true criterion of such value must be its earning capacity." In People v. Hicks, 40 Hun, 601, we find the following, which we adopt as a very careful statement of the law: "The estimate of value of any portion of the road cannot be intelligently made without some knowledge or information of it as a whole, and its business, earnings, and ordinary expenses. Railroads are constructed with a view mainly to revenue and profit upon investments; and hence the productive capacity and its earnings are matters for consideration in the estimate of their value, and the extent to which actual net earnings of a road should governor aid such estimate is dependent upon circumstances. No arbitrary method can be prescribed of ascertaining value. In some cases the earnings of a road may be entitled to much more consideration than in others. The cost of the road is also usually to be taken into account, and the value depends much upon relations present, and in reasonable contemplation, because the value of property may considerably be dependent upon defined unappropriated means and facilities for increased business connections and relations, and the importance of the consequences to follow." To the same effect are Railway Co. v. Guenther, 19 Fed. 395; People v. Pond, 13 Abb. N. C. 1. See, also, People v. Fredericks, 48 Barb. 173; State v. Central Pac. R. Co., 7 Nev. 99. Perhaps, to avoid a misunderstanding of our decision, it should be stated in this connection that the value of a portion of a road is not, necessarily, a fractional part of the whole. Owing to

local considerations, it may be greater or less. But we find nothing in the evidence in this case indicating any difference, and it is only mentioned to avoid a misconception of the opinion.

Without contradiction, the evidence in this case shows the following facts: That the cost of construction of the road was $3,780,452.96, but that it could now be replaced, exclusive of the right of way, for $1,500,000. That for the year ending June 30, 1894, the net earnings were $8,642.52; for the year ending June 30, 1895, $27,449.53; and for the year ending June 30, 1896, of which the last three months were estimated upon the basis of the receipts for the preceding nine months, $21,077.71, from which should be deducted at least $6,898.23, the amount the defendant admitted to be due Storey and Washoe counties for taxes for the year 1895, and possibly more, depending upon the result of this and a similar action in Storey county, leaving net for that year $14,179.50 or less. It is not claimed that these figures are incorrect, nor that the gross receipts of any year might have been increased by proper management, or the amount of expense decreased. It was also shown, without contradiction, that the current rate of interest in Washoe county was 8 per cent. per annul. Whether a broader view should not have been taken upon this point, and the rate of interest fixed at a lower figure, we have no data upon which to form a conclusion. There was no evidence that it was too high, and for the purposes of this appeal it must consequently be accepted as correct. It was also shown, again without contradiction, that there is no prospect in the near future that the business of the road will increase. In fact, it seems quite probable that, if anything, for some time to come, the receipts must decrease. In this connection it is argued that the jury had a right to exercise their own judgment in determining whether there was a probability of future improvement; that they could take judicial notice of the condition of the country, and determine as well as an expert whether business was likely to increase; and that, having done so, their judgment cannot be revised by this court. Admitting, without deciding, that they could take such notice of surrounding conditions, then this court has the same right and the same knowledge that the jury had, and, the same as a finding upon any other point, there must be something substantial upon which to base it. If the jury can take judicial notice of a thing, it must be of something that exists, not of something that does not, and there can be no question that there is nothing now except pure speculation upon which to base such a belief. There are no improvements contemplated and in process of construction, and no new mining camps discovered and developed to such an extent, in the region of country tributary to defendant's road, as make it reasonably certain that they will add materially to the income of the road in the near future. To affect the present value of the road, such prospective improvement must be more than a possibility. It must be so near and so certain that a business man purchasing the road would take it into consideration. People v. Weaver, 67 How. Prac. 477. It is present and not prospective value that is in question. People v. Roberts (Sup.) 38 N. Y. Supp. 724. It is very probable that, in time, new mining discoveries will be made, or present ones further developed, and new enterprises opened up that will bring in an increased population, and add to the business of this road, and we certainly believe such will be the case, and when this happens it will add to its value; but this possibility does not, as a business proposition, add materially to its present value. From the foregoing data, which certainly, in the main, cover the elements to be taken into consideration in determining the value of this road, there can be no question that the portion of the road in Washoe county is not of the true cash value of $254,321, as fixed by the verdict. It does not seem reasonable that the value of a road should be fixed in view of the net receipts for any one year, which, owing to abnormal conditions, *726 may be greater or less than the average; but we are not called upon to consider that point here. We should certainly not go back beyond the railroad fiscal year of 1893-94, because the evidence shows that the conditions which produced a net profit the year before of $102,341.52 no longer exist; and if we should put the years 1893-94, 1894-95, and 1895-96 together, the average would be less than the receipts of 1894-95. So, considering that year alone, the net receipts were $27,449.53. That sum, capitalized at 8 per cent., represents $343,119.12 as the value of the entire road, not taking into account the rolling stock and other personal property, consisting of 51.75 miles of main track and 26.14 miles of side track, of which amounts there are 25.65 miles of main track and 3.55 miles of side track in Washoe county. Several different ways of figuring Washoe county's proportion of the entire valuation may be adopted, depending upon the view taken of the side track; but under none of them can it amount to near the sum of $254,321, as fixed by the verdict.

In making the above estimate, and in basing it entirely upon the earning capacity of the road, we do not wish to be understood, as we have stated before, as holding that there may not be other considerations which, in some cases, would cut quite a material figure. We simply hold that the earning capacity is the main consideration, and that, as shown in the evidence in this case as reported to us, we discover no others of sufficient importance to affect the result. The only evidence tending to support the verdict is that of the assessor. He testified that in his judgment the road in Washoe county was worth what it was assessed for. It appeared, however, that he had no special knowledge of the value of a railroad, nor was he any better qualified to testify to the value of one than almost any other man in the community. He stated that, in making the assessment, he had taken into consideration the business the road seemed to be doing, certain mining developments which, at the time of the trial, had turned out to be worthless, the material in the road, and its condition; that he did not examine the reports of the road, nor did he make any inquiry to ascertain what business it was or had been doing; that he did not take into consideration any decrease in the earnings of the road, and that, if he had known they had greatly decreased, it would not have made any difference in his judgment of its value; that, in making up his judgment, he didnot take into consideration what the business had been, nor what it might be in the future. In making the assessment, he seems to have looked the property over, and to have come to the general conclusion it was worth the value he placed upon it. This would be all right, so far as the assessment was concerned, if he hit it right, because the law does not require the assessor to act upon any particular kind of evidence; but, when it comes to testifying as an expert, he must be able to give some reason for his conclusions, or they are not entitled to much weight. Certainly he was able to give none here, and we cannot consent to the claim that such evidence creates a substantial conflict with the undisputed facts shown by the defendant.

There is also a question as to whether a part of the cost of a steel bridge across the Truckee river, erected in the year 1894, should be deducted as a part of the expense of that year. As we understand the facts relating to that matter, they are as follows: The old wooden bridge had become decayed to such an extent that it was necessary to replace it with a new one. The cost of a new wooden bridge would be $6,018; of a new steel bridge, $7,812.79. The company concluded to put in a steel bridge, and it now claims that what it would have cost to build a wooden bridge should be deducted as a part of the annual expense of keeping up the road, and that only the difference between the cost of the two should be charged to construction account. We see no reason why this is not correct. Replacing a worn-out bridge would seem to be as much an expense of keeping a road in repair as would replacing old ties, old rails, or old culverts; and in our statement of the net earnings of the road we have accordingly deducted it. As this expense will not have to be incurred again, it is fair to suppose that the future net earnings will be increased by that fact. Judgment and order reversed, and cause remanded for a new trial.

BONNIFIELD and BELKNAP, JJ., concur.

Nev. 1896.
State v. Virginia & T.R. Co.
35 L.R.A. 759, 23 Nev. 283, 46 P. 723

END OF DOCUMENT

EXHIBIT 9

Consolidated Coppermines Corp. v. State, 68 Nev. 298 at 301 (1951)

"There is no dispute as to the nature of the tax as provided by our revenue act. It is recognized by all parties that the tax is an ad valorem tax rather than an income tax or occupation license; that the tax is not upon the mine itself nor upon the mining enterprise but is solely upon the proceeds of the mine."

Supreme Court of Nevada.
CONSOLIDATED COPPERMINES CORP.
v.
STATE et al.

No. 3625.
May 11, 1951.

Action by Consolidated Coppermines Corporation, a corporation, against the State of Nevada, the County of White Pine, and the Nevada Tax Commission, to recover taxes paid under protest. The Seventh Judicial District Court, White Pine County, Harry M. Watson, J., dismissed plaintiff's complaint, and plaintiff appealed. The Supreme Court, Merrill, J., held that amount of premium payment made to plaintiff, under government plan for stimulation of copper production in addition to amount received commercially from sale of ore, was paper of price for ore and was subject to ad valorem tax placed on proceeds of mine.

Judgment affirmed, with costs.

West Headnotes

Mines and Minerals 260 ⚿87

260 Mines and Minerals
260III Operation of Mines, Quarries, and Wells
260III(A) Statutory and Official Regulations
260k87 k. Licenses; Severance and Production Taxes. Most Cited Cases
(Formerly 371k348)

Where plan of federal government sought to stimulate production of copper by finding price scale which would make marginal production of copper feasible and original plan was to buy overquota copper at premium price directly from mine, but sales through commercial channels and payment of difference between ceiling price and premium price was substituted for purposes of convenience, amount of premium payments made to producers in addition to sums received commercially for ore was part of price paid for ore and not independent income and was subject to ad valorem tax placed on proceeds of mine.

Taxation 371 ⚿2525

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2525 k. Mineral or Mining Property. Most Cited Cases
(Formerly 371k348.1(5), 371k348)

Where taxpayer was allowed deduction of $74,271 from assessed valuation of mine as money to be spent for developing ore deposit, value of undeveloped ore deposit would arbitrarily be fixed at $74,271, and such amount would have to be added to value of mine for tax purposes.

**198 *299 Woodburn, Forman & Woodburn, Reno, for appellant.

W. T. Mathews, Atty. Gen., Alan Bible, George P. Annand, Robert L. McDonald, Thomas A. Foley, Deputy Attys. Gen., and C. J. McFadden, of Ely, for respondents.

MERRILL, Justice.

This is an appeal from judgment of the trial court dismissing the complaint of appellant in an action brought by it to recover the sum of $18,175.83 taxes paid under protest. The sole question involved in the appeal is whether government premium payments made to appellant in addition to sums received by it for sale of its ore, can properly be regarded as mine proceeds and therefore subject to tax under the revenue laws of this state. The appeal comes to us upon a stipulated statement of facts.

During the first six months of 1945 appellant extracted from its mining properties in White Pine County, Nevada, 1,041,759 tons of ore containing gold, silver and copper. From this ore, after smelting

and refining, appellant received through sales in ordinary commercial channels the sum of $2,510,834.05. This sum plus the sum of $606.71 received in royalties, was duly reported to the Nevada Tax Commission as gross yield of the *300 mine for the period in question. Appellant also reported to the Commission as proper deductions from its gross yield the sum of $2,712,057.65, thus making return that its deductions exceeded its gross yield and that it had accordingly received no net proceeds from its mine during this period for which tax might be imposed.

During the period in question a ceiling price of 12 cents per pound of copper had been imposed by the Federal Office of Price Administration and the proceeds of appellant's sales of copper had been limited accordingly.

In addition to the gross yield reported by it, appellant had also received for its production during this period the sum of $862,162.75 paid to it by Metals Reserve Company, a statutory subsidiary of Reconstruction Finance Corporation. These payments had been made pursuant to the terms of a federal program inaugurated jointly by the War Production Board and the Office of Price Administration and known as 'Premium Price Plan for Copper, Lead and Zinc'. Under the plan a quota (in the main based upon 1941 copper production with consideration given to cost of production) was fixed by Metals Reserve Company for each copper producing mine. For all production in excess of the quota Metals Reserve Company paid the sum of 5 cents per pound. The sum received by appellant from Metals Reserve Company therefore reflected the sum of 5 cents per pound for overquota copper produced by it during this period.

The tax commission insisted that these payments be include as part of the mine's gross yield and upon such addition levied its tax of $18,175.83. This amount was paid by appellant under written protest and this action was duly brought for its recovery.

There is no dispute as to the nature of the tax as provided by our revenue act. It is recognized by all parties that the tax is an ad valorem tax rather than an income tax or occupation license; that the tax is not upon the mine itself nor upon **199 the mining enterprise but is solely *301 upon the proceeds of the mine. The dispute before us is as to the character of the sums provided by Metals Reserve Company. It is contended by respondents that these sums constitute mine proceeds. It is contended by appellant that they do not. Authority upon the proposition is limited to decisions of the courts of two western states, Montana and Utah. The authority is cleanly divided, Montana supporting the position of appellant and Utah that of respondents. In this opinion we follow the views of the Utah court.

In support of its position appellant points out that the net proceeds tax is a tax upon the value of ore or its product; that the sale price is recognized as the primary measuring rod in determination of value; that the sales here involved were made through ordinary commercial channels and the price received was 12 cents a pound; that no sales were made to Metals Reserve Company; that the premium payments, accordingly, came from a source entirely independent of the sale itself. Appellant therefore concludes that the premium payments here involved had no relation to the value of the ore and were not part of any sale price; that while they may have constituted income of the enterprise, this must be recognized as a factor entirely apart from the value of the proceeds themselves.

Klies v. Linnane, 117 Mont. 59, 156 P.2d 183, 185, supports and illustrates appellant's position. There it is stated:

'Production not otherwise practicable may artificially be made so, either by increasing the price of the product, or by rewarding the production otherwise, as by subsidy or bonus payment. An essential difference between the two methods is that a direct price increase ordinarily not only rewards and thus encourage additional production, but also makes more profitable the production which would have existed without it; on the other hand, the subsidy or bonus method can more practicably be limited in application to the additional production. *302 Either method would tend to increase the production of strategic metals for war purposes by making profitable an enterprise which otherwise could not pay its way, and therefore, could not operate. Both methods increase the proceeds and therefore the value of the enterprise by making it profitable, but only the price rise method increases the value of the product. Thus they are similar only in increasing the income from, and the value of, the enterprise.

'* * * But the tax upon the net proceeds of mines is not based upon the value of the enterprise, nor upon all possible income therefrom. It is based only upon the net value of the ores produced. Income in addition to that received as the net value of the product may perhaps be taxable as income, but it is clearly not taxable as 'net proceeds of mines' * * *.

'* * * the value, however fixed, is the price paid and received for the metal, and other rewards, incentives or incidental income are not part of that value; they are therefore not part of the tax base.'

For an independent analysis of the character of the premium payments we turn to the plan itself and to the circumstances and conditions which determined its ultimate form. See: Seventy-ninth Congress, Second Session, Senate Subcommittee Print Number 8, 'Premium Price Plan for Copper, Lead and Zinc; Its Administration With Particular Regard to Small and Marginal Mines,' (which bulletin forms a part of the stipulated facts in this case). Page references following are to pages of this bulletin.

Following the outbreak of war in Europe, American metal markets were unstable, with sharply fluctuating prices. Copper advanced from 10 1/2 cents in July, 1940, to 12 cents in September. In April, 1941, a 12 cent ceiling was fixed. Military requirements were growing steadily and the necessity for maximum expansion of domestic production was indicated. Increased production automatically resulted in rapidly increasing costs as it became necessary to resort to lowergrade ores and *303 more costly mining. By the end of the year it had become clear that domestic production could not be increased to the necessary extent 'without establishing price scales that **200 would make profitable the mining of marginal ores.' (Page 42.)

To this end various plans received consideration by federal stabilization and production officials and some were actually placed in temporary operation. Alternative proposals included a general raising of the 12 cents ceiling and direct government purchase at a price of one cent plus out-of-pocket costs. The latter method was actually applied for a short period in the case of certain Michigan mines. General ceiling raises, however, were rejected on the basis of experience gained during World War I when such practices had resulted in copper reaching a level of 26 cents a pound, almost double the 1914 price. A 'two-price' plan was first proposed August 4, 1941.

With the entry of the United States into war following the attack on Pearl Harbor, the Office of Price Administration was ready to accept the two-price system applicable to lead and zinc. Copper was not at first included, the feeling apparently being that the cost-plus arrangement was adequate to meet the circumstances. The original plan for lead and zinc provided for government purchase of overquota production under a differential price arrangement. This was to be accomplished by having Metals Reserve Company purchase all incremental production and resell it at the ceiling price, absorbing the loss.

In January, 1942, copper was included in the plan. Federal Loan Administrator Jesse Jones advised O.P.A. under date of January 12, 1942, 'You are advised that, in accordance with your suggestion, Metals Reserve Company will, at your request, for a period of 2 1/2 years from February 1, 1942, pay * * * 17 cents per pound, Connecticut Valley, for copper, for increases above 1941 production governed by quotas to be fixed by you with our approval. * * * Any metals so acquired by Metals *304 Reserve Company which are not used for or by the Government will be subject to your allocation at the ceiling price fixed by the Price Administrator * * *.' (Page 44.) On January 13 the program was explained to the public through a press release which contained this statement: 'All the overquota output acquired by the Metals Reserve Company will be used for, or by, the Government or will be sold, subject to Government allocation, at the regular Office of Price Administration ceiling prices. All quota production must, of course, be sold by producers at or below the Office of Price Administration ceiling prices. Hence the premium-price program to stimulate additional production will not lead to higher prices to the consumer.' (Page 217.)

By February 1, however, details of the plan still remained to be worked out and the feature of direct government purchase, therefore, was not yet feasible. To avoid delay in the plan's operation, arrangements were made to proceed temporarily without application of that feature. A press release advised: 'Further details of this plan will be announced in due course. In the meantime all producers should continue to sell

their output through regular channels in the ordinary way, but should keep all data covering production, sales, and settlements so as to be in a position to make out the affidavit which will be required of them. If, at any time, any producer has thus sold his excess output at ordinary market prices, he will not thereby be deprived of the benefits of this arrangement, since in such cases an equivalent quantity of material will be eligible for sale, at the higher prices, from subsequent deliveries.' (Page 218.)

Up to this date it was apparent that the plan contemplated actual sale to the government of the overquota output at the higher or premium price. Sale of overquota output through regular channels was merely a stopgap procedure adopted to permit immediate operation of the plan.

On February 9, 1942, the terms of the plan itself were *305 announced and for the first time it was indicated that sales of overquota output were to be made through commercial channels as a regular feature of the plan. It can only be concluded that in the interests of time and convenience, an unnecessary procedural change was regarded as unwise. The statement of the plan included the following language: 'Premium prices of 17 cents for copper * * * will be paid for a period of 2 1/2 **201 years beginning February 1, 1942 * * *.' The purpose of the plan and the reason for its necessity were clearly stated: 'The only purpose of the premium-price plan is to compensate for extra costs involved in bringing out additional metal output.' (Page 220.)

It is notable that the term 'price' is used consistently throughout government releases and correspondence on the subject. The government was seeking a 'price scale' which would make profitable the mining of marginal ores; the 17 cent total payment was a 'premium price'; the plan was a 'two-price plan'; the method or technique utilized was 'differential pricing'.

Upon consideration of this factual background we find the conclusion inescapable that the premium payments made by Metals Reserve Company were in character a part of the price paid for the ore produced and did not constitute an incentive reward unrelated to price or value.

This is supported by the fact that under the various alternative plans considered and ultimately rejected there could have been no question but that the sum received was the sale price. For example, had the government accomplished its end by a general raising of the price ceiling there would, in lieu of the premium payment here involved, have been a higher price through ordinary commercial channels. Had the government continued with the cost-plus arrangement applied to the Michigan mines there would have been no question but that the sums paid were the sale price of the ore itself. Under the 'premium price plan' itself, as originally conceived and announced with direct government *306 purchase of overquota production, there could have been no question but that the premium was part of the price paid. Even without the feature of direct government purchase the government clearly regarded the 17 cents, being the sum of the ceiling price and the premium payment, as itself constituting a price: the 'premium price' from which the plan derived its name.

It should be noted as well that under the 12 cent ceiling there was no free and open market in which the true value of the product could be ascertained. The sale price was artificially fixed and artificially supplemented. Had it been permitted to rise, even under attempts at control, it may well have risen to the World War I price of 26 cents. The premium payment, in the light of the existing ceiling, cannot then be said to have been a subsidy over and above the actual value of the mine proceedings. It was, rather, a partial restoration to the producer of the value of his product lost to him by imposition of the ceiling.

In summation, then, the circumstances of our war economy and the necessities of war production demanded additional production which could not be brought out without the incurring of extra costs by the producer. Such production therefore necessitated the making of extra-cost compensation to the producer in addition to the 12 cents per pound. Can it reasonably be said that the character of such compensation varied as alternative methods or techniques were employed by the government in its experimental efforts to find the program most generally satisfactory? If so, it must also be said that the 'value' of the mine product varied accordingly, dependent not on those economic factors which would ordinarily affect it; dependent not on the extent of compensation received nor the considerations which prompted such

compensation; but rather dependent entirely upon administrative method in the providing of such compensation. In our view such a proposition cannot be supported as reasonable.

In our reasoning and analysis we therefore follow the *307 views of the Utah Supreme Court. Combined Metals Reduction Company v. State Tax Commission, 111 Utah 156, 176 P.2d 614; United States Smelting, Refining and Milling Company v. Haynes, 111 Utah 172, 176 P.2d 622; Combined Metals Reduction Company v. Tooele County, 111 Utah 188, 176 P.2d 630; Kennecott Copper Corporation v. State Tax Commission, Utah, 212 P.2d 187. The premium payments here involved are held to be mine proceeds and accordingly subject to tax.

The judgment of the trial court is affirmed with costs.

BADT, C. J., and EATHER, J., concur.

Nev. 1951
Consolidated Copper Mines Corp. v. State
68 Nev. 298, 231 P.2d 197

END OF DOCUMENT

Testimony of Michael J. Brown
Vice President Corporate & External Affairs – North America
Barrick Gold Corporation
Before the Committee on Taxation of the Nevada Assembly
May 2, 2013

I am Michael Brown, Vice President of Corporate & External Affairs – North America for Barrick Gold Corporation. I have been with Barrick since 1994 and this is my 10th regular session participating in the deliberations of the Nevada Legislature. While most will remember me leading our government relations effort for nine legislative sessions, I actually have a new position leading a new Corporate Affairs Department that focuses on Corporate Social Responsibility, Government Relations and Communications.

The creation of this department and the professionalization of our Corporate Social Responsibility practice is a direct result of our decision in May of 2011 to deepen our engagement in Nevada with a series of thrusts that include;

1. A major commitment to expanding our vendor base and economic ties in the state and a firm engagement with the Governor's new economic development program

2. A renewed focus on recruiting, training and hiring Nevadans

3. An enhanced level of support and engagement with the state's indigenous Western Shoshone communities

4. A new "Partnership Program" focusing time, talent and treasure with non-governmental organizations trying to address the challenge of Nevada's high school dropout rate.

5. A deeper commitment to Nevada students, public schools and the Nevada System of Higher Education.

As a company this is our 27th year in Nevada. We wish to foster long-term sustainability throughout the state. We are the only large rural company committed to all of Nevada – North, South and Rural. I believe that NV Energy is the only other company in Nevada engaged in the "three states" that comprise Nevada.

Inside Barrick we called this effort "Rediscovering Nevada" and within 18 months our work was recognized when the Latin Chamber of Commerce of Las Vegas named us "Corporation of the Year 2012."

In addition to chairing the Government Relations Committee of the Nevada Mining Association, I have joined the boards of Communities in Schools, the Three Square Food Bank and continue to serve on the Public Education Foundation of Clark County. I am a member of the business advisory committee to the Chancellor of the Nevada System of Higher Education.

Barrick ranks as a world leader in corporate social responsibility as noted by our achieving a listing on the Dow Jones Sustainability World Index and the North American Listing, every year since 2007. We are members of the Clinton Initiative, the Brookings Institution, the UN Global Compact, the Global Reporting Initiative and the Extractive Industries Transparency Initiative. Very few companies in this state have made such deep commitments to sustainability and CSR. Later this summer, I will be working to tap the talent at Brookings in Washington and with the Clinton Initiative to support the work being done in the Leadership Institute of the Public Education Foundation. That Institute was created by the last legislature and receives sustaining support from Barrick, Newmont and NV Energy.

We were pleased that the Governor and the Legislature have embarked on the effort to diversify the Nevada economy and attract valued-added companies to Nevada. As the state's largest foreign direct investor and Nevada's largest exporter, we were pleased to help to create the new Canada–Nevada Business Council and to help with projects sponsored by the economic development office.

Today I want to address the larger issues that surround the taxation of mining in Nevada. I hope the chair would permit me to address a few broader issues that have brought us here today. Developing tax policy is challenging, as President Warren G. Harding commented.

> ***I don't know what to do or where to turn in this taxation matter. Somewhere there must be a book that tells all about it, where I could go to straighten it out in my mind. But I don't know where the book is, and maybe I couldn't read it if I found it.***

Since Bert Goldwater chaired the 1960 *Special Citizens Committee on Taxation and Fiscal Affairs* the state has sought to establish a stable system of taxation. But as David Schwartz from the Las Vegas Sun pointed out in a thoughtful 2009 article, Nevada still has a tax system not by design, but by default.

That makes your job especially challenging. In a 1967 study of Ohio taxes it was noted:

> ***A tax structure is an institution evolving out of the political and economic life of a state over a period of time. It is never possible to start over with a clean slate and prescribe a totally new structure derived from some purely theoretical standard even if this were desirable; rather it is always necessary to review the existing structure in light of some generally desirable standards and arriving at some modifications which are within the realm of possibility.***

I want to thank this committee for taking the time in the last legislative session to review the Net Proceeds of Minerals tax system. That was the first thoughtful and comprehensive review since the reforms of 1989 were enacted. That process, led by then Chairwoman Kirkpatrick, was a line-by-line review of allowable deductions. At the time I thought that would conclude the debate.

Industry specific taxes, like a minerals tax, are exactly that, specific to an industry. States like Nevada that depend on industry specific taxation, are in fact in a partnership with those industries. As partners the obligation falls on us to educate policymakers and to keep you current on trends in our industry.

As a partner it is first important to understand that mining is a global business. Mining requires billion of investment dollars that can only be raised in global capital markets. Gold is the state's largest export product. However Nevada is competing with other nations for the investment of scarce exploration and capital dollars. Factors in that investment decision-making process include ore grades, infrastructure, reserves, political stability, social factors and fiscal regimes.

Generally speaking, there are no gold nuggets, bars or even visible veins of gold to be found in Nevada. The gold is microscopic and disseminated in solid

rock at great depths, often under the water table. It is not like mining coal where one mines a continuous seam of coal yielding a marketable product at the mine-mouth. Absent the billions of dollars in world-class processing facilities built by our industry in Nevada, the gold would remain unrecoverable and of no value, as most of it did until the 1980s

Now turning to mineral tax policy, after the fall of the Berlin Wall in 1989, the new forces of globalization changed the mining sector as new markets opened around the world. Institutions and groups like the IMF, the World Bank, the International Council on Mining and Metals, Ernst & Young and others have done considerable study of mineral taxes. I want to summarize some key findings. One thing you will find is that Nevada is actually getting it right in many areas and also keeping its mineral sector competitive on the global stage.

Mining is not manufacturing. Mines are not alchemy factories producing shiny bars of pure gold. Some of the important distinctions identified by the researchers, and important for our partners to understand, include:

- The development of a mine is a risky and long-term investment.

- Mines have a long gestation period associated with development when no revenue is being generated. They also have long and expensive closure periods when again no revenue is generated.

- Mineral and commodity markets are volatile. Note: In the last ten years we have experienced a full swing in gold prices from record lows to record highs. As you may know, recent gold price trends are not encouraging.

- Mines have very large ongoing capital and operating costs - my company has invested $3 billion dollars in our Nevada mines over the past six years

- The capital to build a mine is captive, tied to the location of the deposit and is not transportable.

- A mine is a depleting asset requiring the constant investment of new capital to replace reserves and to sustain operations

In the area of tax policy it is advised:

- When designing a tax system policymakers should be aware of the cumulative effects taxes can have on mine economics and the effects on potential future investment

- Nations (and states) should weigh the immediate fiscal rewards to be gained against the long-term benefits from a more stable and sustainable mining industry.

- Governments should invite mining companies to play a role in devising the system. Governments will be able to arrive at better-reasoned decisions if they are provided with quantitative assessments.

- Nations (and states) with a strong desire to attract mining investment should consider forgoing a minerals tax and rely on the general tax system, such as income taxes. Such taxes are considered to be more efficient, without the complex accounting and auditing of product-specific taxes

- Governments should have a revenue sharing arrangement between the central government and the local mining communities.

- There must be a relief measure for mines in financial duress.

- It should be recognized that public benefits from mining extend beyond taxation. Because of their remote locations, mines drive investment in community projects and public infrastructure, bringing growth and commerce to rural areas.

- Governments should consider profit-based systems – the most commonly found system in North America, rather than unit-based systems or regimes that would affect cut off grades, eliminate jobs and shorten the operating life of a mine.

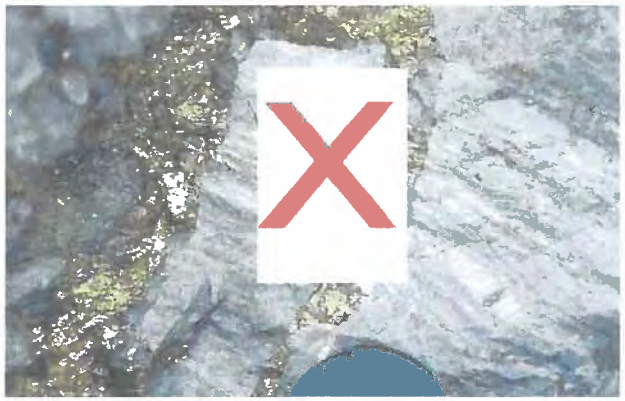
A response to short-term populism could have long-term economic consequences. Government has to find what Eliot Richardson once called in

the area of policy development; “The Creative Balance.” In this case, it is the balance between short-term gain and long-term sustainability.

Ernst and Young, a firm with great expertise in all areas of state taxation, reminds policymakers like yourselves that minerals are immobile while capital investment and mining talent is mobile in a global market. It would be unfortunate if a decision, taken under the pressure of social media; NGO activism and urban v. rural/South v. North antagonism produced an adverse investment climate. Such a result could take years to reverse with negative consequences for all of Nevada.

In closing, I was pleased to read yesterday that we will soon have a winner in the collegiate athletic Governor’s Cup – a program supported by NV Energy and Barrick to promote healthy competition between UNLV and UNR and to provide new scholarship support. In addition to supporting these two great institutions, the program aims to foster a more united Nevada. I hope we can address the issues of taxation with a similar healthy and a comprehensive approach to do what is best for all of Nevada. Thank you.

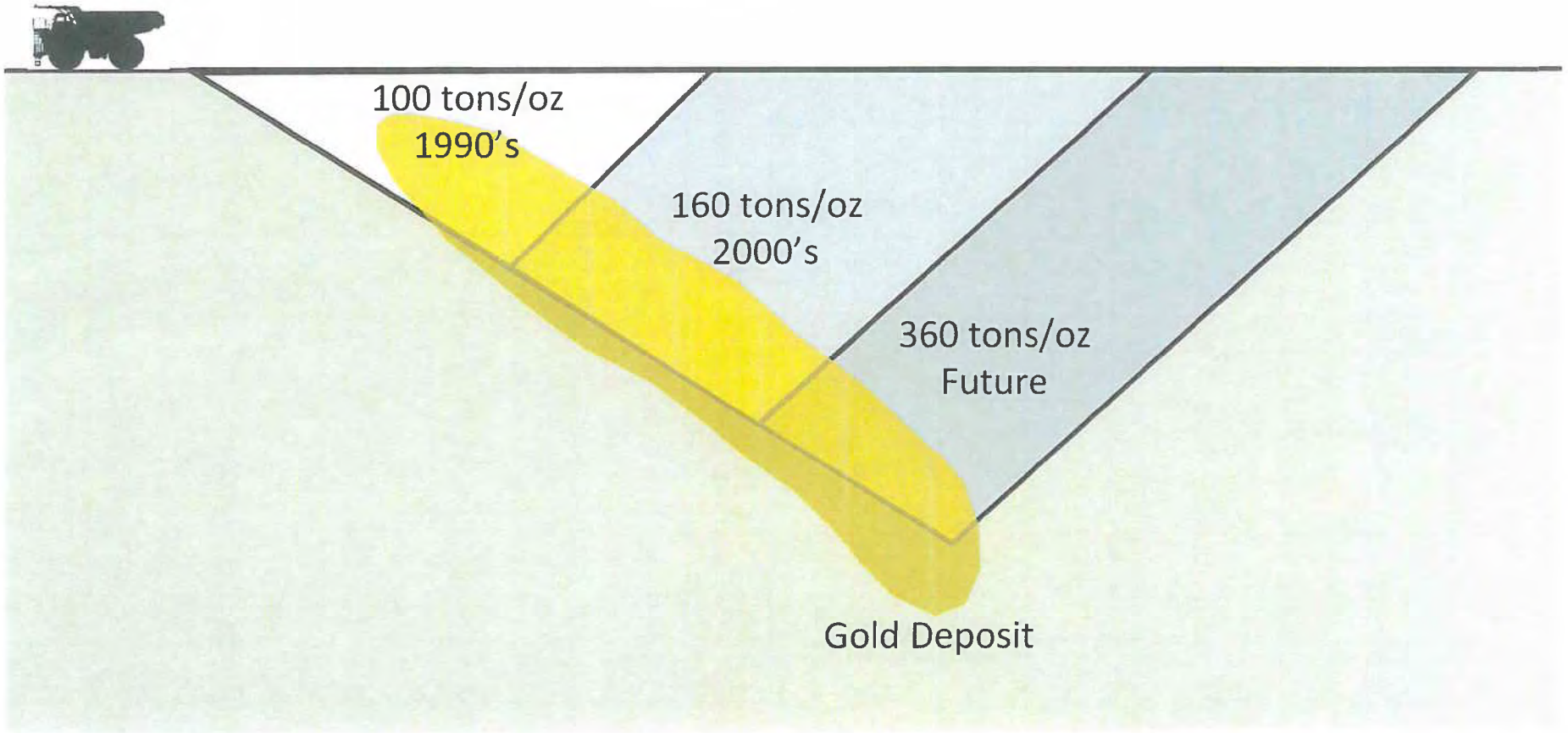
No Gold Veins, Nuggets or Bars



Assembly Committee: Taxation
Exhibit: G Page 1 of 2 Date: 05/02/13
Submitted by: Michael J. Brown

Costs Increase With Mine Depth

Tons Mined for Each Gold Ounce
(cut away view)



City of Elko
City Hall
1751 College Avenue
Elko, Nevada 89801
Phone: 775-777-7110
Fax: 775-777-7119

April 29, 2013

Irene Bustamante Adams, Assembly Woman
3800 Reflection Way
Las Vegas, NV 89147-4442

RE: SJR 15 & SB 400

Dear Irene Bustamante Adams:

The City of Elko is opposed to Senate Joint Resolution 15 (SJR 15), which "proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines" and is equally opposed to Senate Bill 400 (SB 400) which "revises provisions governing the taxation of mines and mining claims and excludes the value of certain mineral deposits from the taxable value of property."

The mining, geothermal, oil and gas industries are very capital intensive international industries. For many years, the State of Nevada has ranked in the top ten locations in the world for metals exploration and production. This rating is not based solely on geology, but on political and tax stability. Although third-world countries often have much better geology for the extractive industries, their lack of stable tax structures place them low on the list for natural resource investment. As such, we object to any effort to dismantle the steady form of tax revenue to our local communities and the State of Nevada.

Furthermore, the notion that natural resource industries are protected from taxation by the State Constitution and are therefore protected from additional taxation is not true. In reality, the Nevada State Legislature could enact additional taxes on the industry with or without changes to the Constitution. For example, the State of Nevada assesses additional taxes such as sales and use, property, and payroll taxes. In Elko County, 55 percent of the consolidated sales tax revenues are derived from industrial sales, largely from equipment sales to the mining and natural resources industries. As such, consolidated sales tax funds nearly 65% of the City of Elko's general fund.

The State of Nevada needs capital investment by private industry to create well-paying jobs and a healthy tax base. The current formula for the Net Proceeds of Minerals Tax (NPOMT) has created just that, supplying a reliable source of revenue to both State and local governments. With the current NPOMT tax, most rural Counties are net exporters of tax revenue to the State,

and the jobs created provide living-wage salaries and benefits not to just Nevada mining employees and their families, but to the thousands of Nevada citizens employed in mining support industries throughout the State (including the Las Vegas and Reno areas).

While Senate Bill 400 strives to determine the rules for taxing mines should Net Proceeds be removed, the proposed legislation raises more questions than it answers. For example, if property taxes are applied to 35% assessed valuation (as opposed to 100% assessed valuation as it is today), it will cause an approximate $100 Million reduction in revenue to the State of Nevada and an approximate $70 Million reduction in revenue to the rural mining counties. Other important and unanswered questions include:

- What are the ultimate fiscal impacts to the rural mining counties?
- What are the proposed distribution rates? Currently half of mining taxes go to the State and half to the counties. Will that change?
- Will mining taxes change from being centrally assessed to locally assessed? If so, will the county treasurers assume auditing responsibilities?
- Will there be State resources available to assist in implementation?
- Is this an unfunded mandate (it may require local assessors and communities to completely change the way they operate)?

While we believe that all Nevada industries should do their part, legislation that so drastically affects our State and local governments should be carefully reviewed and analyzed, so as to avoid negative and unintended consequences. Both SJR 15 and SB 400 appear to be very problematic and may cause significant economic hardship to rural mining counties and the State of Nevada. Therefore, the City of Elko cannot support either legislative proposal.

Respectfully submitted,

Chris J. Johnson
Mayor
City of Elko

cc: Honorable Governor Brian Sandoval
Honorable Lieutenant Governor Brian Krolicki
Senator Pete Goicoechea
Assemblyman John Ellison
Elko City Council
Curtis Calder, City Manager
Shanell Owen, City Clerk
File

April 30, 2013

Nevada Legislation - 2013 77th Session
401 S. Carson Street
Carson City, NV. 89701-4747
ATTN: Assembly – Committee on Taxation

GREAT BASIN REGIONAL DEVELOPMENT AUTHORITY
Eureka - Lander – White Pine

Chairwoman Bustamante-Adams and Committee:

White Pine, Eureka, and Lander Counties have recently formed the Great Basin Regional Development Authority. This initiative is based on the visions of AB-449 and the Nevada State Plan regarding economic development in Nevada. As the Chairwoman of this new Nevada Non-profit Corporation, our organization will adopt the mission to regionalize economic development efforts across county lines. This statement is in regards to our opinion of SJR15* and SB400 and their unintended consequences.

With 6,500+ mining jobs within our region, just under half of the states total employees within the Mining Industry, we feel the statements provided by Mr. Garza, Director of Community and Economic Development for White Pine County to his Commission, are factual based and realistic in opinions.

Based on FY 2011-2012 budgets, we have seen a decrease in the Nevada State Distributive School Fund in FY 2011-2012 from FY 2010-2011 by 10.19%, a decrease of $10,154,271.00. It appears, based on State of Nevada, Department of Taxation, Annual Reports per Fiscal Years, the highest budget allocated since 2005 was in the amount of $111,655,998.00 in Fiscal Year 2006-2007. Nevada has seen a decrease by 19.88% of $22,192,290.00. Our organization agrees, that is a substantial amount of decrease that affects our educational system over a five year span.

However, what is the dollar amount of the short fall that needs to come back in the budget fund and what additional funds need to be added to provide for future development to allow Nevada to rank among the top ten best educational programs in the nation? Has an Impact Analysis been completed on the financial gains and burdens SJR15* and SB400 will have on Nevada? Will these measures create an over burdensome economic effect on the states Mining Industry while over funding the necessary amount required to make our educational system whole? Apparently, no dollar amounts have been targeted as a baseline to acquire into the fund.

I understand there are many other measures being acted on today that will bring a surplus of funding into the Nevada's educational budget in the near future. Have these dollar amounts been calculated and determined as to what percentage will be regained based on the shortfalls incurred by other efforts above these two Bill actions?

Great Basin Regional Development Authority understands measures need to be taken to improve our State Distributive School Fund allocation, but shouldn't we have a handle on what new balances need to be targeted and what are all the measures being enacted on now to meet those new balance demands. This only makes "good accounting" sense and allows Nevada to show "good stewardship" practices.

GBRDA is asking for your vote against SJR15* and SB400 until an Impact Analysis has been conducted. Please consider our opinion of SJR15* and SB400 and their unintended consequences.

Respectfully submitted:
Laurie L. Carson
Chairwoman - Great Basin Regional Development Authority
Vice Chair – White Pine County Commission

Assembly Committee: Taxation
Exhibit: I Page 1 of 11 Date: 05/02/13
Submitted by: Jim Garza

Distributions	2010 - 2011	2011 - 2012	Increase/ (Decrease)	Percent Change
State General Fund	$ 1,901,408,712	$ 1,835,497,264	$ (65,911,448)	-3.47%
State Distributive School Fund	99,617,980	89,463,708	(10,154,271)	-10.19% *
Local Governments	2,437,051,401	2,606,151,627	169,100,225	6.94%
Other Distributions	23,175,974	147,157,296	123,981,322	534.96%
Estate Tax Reserve, Endowment and Trust Funds	116,964	29,239	(87,725)	-75.00%
State Debt Service Fund	12,837,953	13,588,784	750,830	5.85%
Total	$ 4,474,208,984	$ 4,691,887,917	$ 217,678,933	4.87%

Sincerely,

Christopher Nielsen
Executive Director

RESOURCE: STATE OF NEVADA
DEPARTMENT OF TAXATION
ANNUAL REPORT FISCAL 2011-2012

Distributions	2005 - 2006	2006 - 2007	Increase/ (Decrease)	Percent Change
State General Fund	$ 1,903,859,244	$ 1,931,824,665	$ 27,965,420	1.47%
State Distributive School Fund	94,428,822	111,655,998 *	17,227,177	18.24%
Local Governments	2,674,865,272	2,733,038,247	58,172,975	2.17%
Other Distributions	21,102,872	21,717,431	614,558	2.91%
Estate Tax Reserve, Endowment and Trust Funds	6,751,949	2,063,308	(4,688,640)	-69.44%
State Debt Service Fund	5,294,997	6,148,312	853,315	16.12%
Total	$ 4,706,303,156	$ 4,806,447,960	$ 100,144,804	2.13%

Sincerely,

Dino DiCianno
Executive Director

RESOURCE: STATE OF NEVADA
DEPARTMENT OF TAXATION
ANNUAL REPORT FY 2006-2007

White Pine County
Community and Economic Development

Courthouse Annex • 957 Campton Street • Ely, Nevada 89301
(775) 293-6592 • Fax (775) 289-8860

April 19th, 2013

County Commission
953 Campton St.
Ely, NV. 89301

RE: SJR15* and SB400

Chairman and Board,

Our office has been researching to gain knowledge of the history, current status and the implications SJR15* and SB400 will have on rural communities. I have held conversations with Terry Rubald (Depart of Taxation), Michael Mears (Eureka County Assessor), and Todd Valline (Governor's Office of Economic Development – Mining Specialist). Based on those conversations, I have concluded the following potential scenarios that could have a lasting effect on many Nevada rural community's way of life.

The Article 10 of the Nevada Constitution, ratified in 1865, provided that only the net proceeds from mines (NPOM) and mining claims will be taxed. Between 1865 and 1989 the net proceeds from minerals tax rate was the same rate as the property tax in each county. In 1989 voters amended the Nevada Constitution to set the maximum net proceeds of minerals tax rate on royalties at 5%, separate from the local property tax with the exception to sand and gravel products. To further explain this Special Tax, NPOM revenue above $4M will have a capped 5% tax, calculated at the following formula; Fixed County Property Tax Rate + Adjusted State Special Tax Rate = 5% NPOM Tax rate cap on production.

This NPOM Tax encompasses Gold, Silver, Copper, Oil, Gypsum and other industrial minerals. Geothermal resources are considered mined minerals as noted, however, their tax rate are always taxed at the same rate as the local property tax rate of the county in which the plant is located. Clark County has the lion's share of industrial minerals such as gypsum. Note below that Geothermal and Gypsum current operations have the highest percentage of allowed deductions to offset NPOM tax liabilities owed.

Net Proceeds of Mines Revenue Based on Mineral Content	2010 Actual Gross Proceeds	2010 Actual Net Proceeds	% of Bus Deductions Allowed to Lower Tax Liability Owed
Gold/Silver	6,642,609,597	2,991,061,386	54.97%
Copper	488,799,008	199,094,719	59.27%
Geothermal	145,265,422	26,097,565	82.03%
Gypsum	11,732,807	383,821	96.73%
Oil	26,665,355	16,357,939	38.65%
Others	223,671,341	42,441,315	81.03%
Resource: NV Dept. of Taxation 2010-2011 Net Proceeds of Minerals Bulletin.		Average	68.78%

The Geothermal and Gypsum Industry business and accounting practices of operational costs and allowable deductions against gross proceeds should be audited to compare to other industries as a quality control measure.

Net Proceeds of Mines Revenue Based on Allowed Deductions to Reduce NPOM Tax Liability/County	2010 Actual Gross Proceeds	2010 Actual Net Proceeds	% of Bus Deductions Allowed to Lower NPOM Tax Liability
Churchill	90,172,051	22,652,197	74.88%
Clark	25,061,228	1,234,968	95.07%
Douglas	14,674	14,674	0.00%
Elko	658,437,891	272,099,007	58.68%
Esmeralda	14,976,018	7,015,362	53.16%
Eureka	2,585,910,792	966,181,387	62.64%
Humboldt	1,037,273,892	303,504,868	70.74%
Lander	1,802,810,096	1,023,033,616	43.25%
Lincoln	963,280	63,914	93.36%
Lyon	9,252,438	503,721	94.56%
Mineral	31,713,843	19,025,195	40.01%
Nye	483,635,832	176,531,168	63.50%
Pershing	176,734,046	59,145,409	66.53%
Storey	14,813,905	354,160	97.61%
Washoe	47,821,509	991,867	97.93%
White Pine	559,152,035	185,181,241	66.88%
Resource: NV Dept. of Taxation 2010-2011 Net Proceeds of Minerals Bulletin.		**Average**	**67.42%**

Per the chart above, based on over one million dollars in gross proceed revenues, it appears Clark, Storey, Lyon and Washoe Counties have the highest averages for NPOM allowable deductions that effect their ability to benefit from NPOM taxes, yet these counties seem to have the most need for tax revenues. These top four counties with the highest percentages of allowable deductions against gross proceeds of minerals should audit each industry within its county lines to evaluate the difference in business and accounting practices as accustomed on average throughout all NPOM contributing industries in the state to potentially capture loss tax revenue?

In May of 2011, the State Senate voted to approve Senate Joint Resolution 15 (SJR15) (first year not to confuse with SJR15 presented in this year's session) that would eliminate the implemented 5% Special Tax Cap imposed and replace such taxes with an equal rate of assessment and taxation that shall be comprised of a just valuation for taxation on all property; real, personal and possessory. The two main groups behind changing the constitution to eliminate caps on mining taxation are the Nevada Teachers' Association and the Progressive Leadership Alliance of Nevada.

This new tax structure will affect all industries that extract and produce finished mineral products and sell those minerals and/or transport those minerals out of the state prior to selling. SJR15 was passed in 2011 and is being re-presented in the 2013 legislative session as SJR15*.

SJR15* would also remove the rights established to the counties that host these mining operations, with the ability to levy a Special Tax at the assessed Real Property Value of the minerals extracted and sold and/or transported out of the state, reducing their overall tax revenues to the county. This Special Tax revenue, when collected, was to be utilized in county government on specific "one-time" expenditures that did not pertain to normal operations of county functions to offset impacts created by these mining operations, to ensure a balance of new jobs created with community assets (schools, hospitals, housing, emergency services, humanitarian issues, etc.).

Below is a list of the financial support White Pine County has been able to assist different areas of needs within its community that may no longer be funded from this Special Tax if removed. Over the last (5) years, this additional income has increased our budgets by 49%. The rows highlighted in red are identified as "most at risk" to affect our community with negative impacts.

White Pine County	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GENERAL FUND	$ 3,698,602.74	$ 4,385,579.14	$ 3,850,281.71	$ 4,132,801.33	$ 1,644,843.60
AG DIST #13	$ 79,475.85	$ 93,284.01	$ 80,212.69	$ 86,801.10	$ 34,667.69
EMS	$ 79,475.85	$ 93,284.01	$ 80,212.69	$ 86,801.10	$ 34,667.69
AG EXTENSION	$ 22,707.38	$ 26,652.57	$ 22,917.90	$ 24,800.31	$ 9,905.05
INDIGENT	$ 227,073.85	$ 266,525.75	$ 229,179.10	$ 248,003.16	$ 99,050.53
CAPITAL IMPROVEMENTS	$ 83,052.26	$ 97,481.79	$ 83,822.26	$ 90,707.16	$ 36,227.73
OPERATING DEBT	$ 136,244.31	$ 115,535.64	$ 20,119.07	$ -	$ -
SENIOR CENTER	$ 45,414.77	$ 53,305.15	$ 45,835.83	$ 108,646.94	$ 49,525.27
CITY OF ELY	$ 25,909.13	$ 30,410.59	$ 26,149.34	$ 28,297.16	$ 11,301.67
CHINA SPRINGS	$ 16,803.46	$ 19,722.90	16959.26	$ 14,808.08	$ 5,546.83
STATE INDIGENT	$ 227,073.85	$ 266,525.75	$ 229,179.09	$ 248,003.16	$ 99,050.53
STATE INDIGENT ACCIDENT	$ 34,061.08	$ 39,978.86	$ 34,376.86	$ 37,200.47	$ 14,857.58
HOSPITAL DISTRICT	$ 1,226,198.78	$ 1,439,239.00	$ 1,237,567.14	$ 1,339,217.07	$ 534,872.88
SCHOOLS	$ 1,703,053.86	$ 1,998,943.07	$ 1,718,843.27	$ 1,860,023.70	$ 742,879.01
SCHOOLS/BOND	$ 565,413.88	$ 663,649.10	$ 570,655.96	$ 617,527.87	$ 246,635.83
LUND TOWN	$ 669.87	$ 786.25	$ 676.08	$ 731.61	$ 292.20
MCGILL TOWN	$ 3,122.27	$ 3,664.73	$ 3,151.22	$ 3,410.04	$ 1,361.94
RUTH TOWN	$ 783.40	$ 919.51	$ 790.68	$ 855.61	$ 341.72
ASESSOR TECH FEES	$ 166,839.52	$ 195,826.28	$ 168,386.31	$ 182,217.07	$ 72,776.08
TOTALS	**$ 8,341,976.11**	**$ 9,791,314.10**	**$ 8,419,316.46**	**$ 9,110,852.94**	**$ 3,638,803.83**
WPC Budget Total	$ 14,108,491.00	$ 14,828,235.00	$ 17,176,068.00	$17,700,274.00	$18,679,368.00
Percentage of Loss	**59.13%**	**66.03%**	**49.02%**	**51.47%**	**19.48%**

Secondly, below is a spreadsheet of the effects SJR15 (first year) will have on current rural county economics similar to White Pine Counties financial burdens if SJR15* gets passed by Nevada voters in November, 2014, putting their financial impact solutions at risk as well.

State of Nevada - Department of Taxation

Net Proceeds of Mines Revenue (NPOM)	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Estimated Revenue % Loss 5 Year Ave as of 1/1/2015
Total Paid by Mining Industry @ 5%	74,129,804	145,449,950	168,695,319	242,605,014	253,311,919	
Total State Fiscal Budget	4,632,233,269	4,182,178,734	4,220,648,952	4,474,208,984	4,691,887,917	
NPOM % of Revenue to State of Nevada	1.60%	3.48%	4.00%	5.42%	5.40%	3.98%
NPOM Revenue To Clark County	42,187	101,020	82,856	3,413	110,102	
Clark County Total Fiscal Budget	5,797,853,294	6,263,804,987	6,449,346,546	6,251,671,997	6,020,179,983	
NP)M % of Revenue to Clark County	0.00073%	0.00161%	0.00128%	0.00005%	0.00183%	0.00%
NPOM Revenue To White Pine County	8,341,976	9,791,314	8,419,316	9,110,853	3,638,804	
White Pine County Total Fiscal Budget	14,108,491	14,828,235	17,176,068	17,700,274	18,679,368	
NPOM % of Revenue to White Pine County	59.13%	66.03%	49.02%	51.47%	19.48%	49.03%
NPOM Revenue To Elko County	1,207,086	6,910,260	7,265,521	5,367,652	9,124,327	
Elko County Total Fiscal Budget	83,142,536	95,049,243	88,271,439	82,824,746	56,559,319	
NPOM % of Revenue to Elko County	1.45%	7.27%	8.23%	6.48%	16.13%	7.91%
NPOM Revenue To Eureka County	9,946,215	25,224,068	19,262,444	28,712,022	25,678,553	
Eureka County Total Fiscal Budget	20,290,649	25,151,969	29,743,691	22,596,751	36,139,069	
NPOM % of Revenue to Eureka County	49.02%	100.29%	64.76%	127.06%	71.05%	82.44%
NPOM Revenue To Humboldt County	5,380,223	7,728,020	8,302,728	8,762,066	14,435,501	
Humboldt County Total Fiscal Budget	25,641,281	27,494,179	28,811,930	29,726,910	29,349,643	
NPOM % of Revenue to Humboldt County	20.98%	28.11%	28.82%	29.48%	49.18%	31.31%
NPOM Revenue To Lander County	3,067,539	4,774,734	31,699,278	61,201,369	58,470,736	
Lander County Total Fiscal Budget	22,063,306	19,791,010	21,093,355	25,031,554	41,868,397	
NPOM % of Revenue to Lander County	13.90%	24.13%	150.28%	244.50%	139.65%	114.49%
NPOM Revenue To Nye County	6,062,878	9,109,836	8,723,557	6,380,258	9,072,296	
Nye County Total Fiscal Budget	92,552,450	116,737,964	125,016,589	101,080,336	108,293,611	
NPOM % of Revenue to Nye County	6.55%	7.80%	6.98%	6.31%	8.38%	7.20%
NPOM Revenue To Pershing County	1,499,991	1,705,206	1,017,047	1,205,927	1,917,981	
Pershing County Total Fiscal Budget	10,396,264	11,863,756	13,083,158	13,377,610	13,489,563	
NPOM % of Revenue to Pershing County	14.43%	14.37%	7.77%	9.01%	14.22%	11.96%

Resource: State of Nevada Department of Taxation Annual Reports 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012.

Finally, SJR15* would remove the exemption of patented mines from paying fair market value per Real Property Taxes. Unpatented mining claims shall no longer be exempt from fair market value per Real Property Taxes. And possessory mineral values on or below the ground will no longer be exempt from fair market value per Real Property Taxes, until recovered and becoming Personal Property and valued as such. This measure will have a negative effect on county and state revenues. It will cost each County Assessor Office many man hours to even develop a formula, defend itself in court against unfair tax practices and incur legal and administrative costs to impose and collect such fees while defending itself in court against mineral right holders.

This will create an unpleasant working relationship between the Mining Industry and local governments. Currently, in 2011, the Mining Industry has contributed more than 7,000 volunteer hours per rural community supports services, $5.3M in financial and community support outside of Net Proceeds of Mine Taxes, improving educational and community service efforts. These current benefits will be at risk and we'll see reductions in contributions to the communities.

SJR15* (* second legislative session presented) has currently passed the Senate but has been referred back to the Senate, to then forward to the Assembly for review by the Committee on Taxation.

Senate Bill 400 coincides with SJR15*, in that, if SJR15* becomes enacted by the voters on November 4th, 2014, SB400, if passed, will impose the following changes.

1. All minerals (not just precious metals) on the surface or in the ground that have not been extracted from its natural state, will no longer be considered personal property awaiting to be retrieved and then assessed, but will now be considered Real Property, as it is attached to the ground surface in its natural state or is embedded in the ground and will have to be estimated for fair market value per a new formula so it can be assessed as Real Property along with the land mass itself.

   Who will this effect?

(24)	Gold/Silver Mining Operations with	$6,642,609,597 in 2010 Gross Proceeds
(1)	Copper Mining Operation with	$488,799,008 in 2010 Gross Proceeds
(15)	Geothermal Mining Operations with	$145,265,422 in 2010 Gross Proceeds
(3)	Gypsum Mining Operations with	$11,732,807 in 2010 Gross Proceeds
(17)	Oil Mining Operations with	$26,665,355 in 2010 Gross Proceeds
(4)	Barite Mining Operations with	$49,308,940 in 2010 Gross Proceeds
(2)	Bentonite Mining Operations with	$230,330 in 2010 Gross Proceeds
(5)	Clay Mining Operations with	$5,872,618 in 2010 Gross Proceeds
(8)	Diatomacious Earth Mining Oper. with	$85,280,013 in 2010 Gross Proceeds
(2)	Dolomite Mining Operations with	$6,252,668 in 2010 Gross Proceeds
(2)	Iron Mining Operations with	$834,587 in 2010 Gross Proceeds
(4)	Limestone Mining Operations with	$32,052,620 in 2010 Gross Proceeds
(1)	Lithium Mining Operation with	$14,526,203 in 2010 Gross Proceeds
(1)	Magnesite Mining Operation with	$5,572,698 in 2010 Gross Proceeds
(1)	Moly Mining Operation with	$10,467,865 in 2010 Gross Proceeds
(3)	Opal Mining Operations with	$196,228 in 2010 Gross Proceeds
(2)	Perlite Mining Operations with	$1,412,846 in 2010 Gross Proceeds
(1)	Salt Mining Operation with	$776,790 in 2010 Gross Proceeds
(2)	Silica Mining Operations with	$10,797,148 in 2010 Gross Proceeds

What will be the reaction to these (98) Nevada Corporations to these bills and will Nevada see a reduction within the 28,300 employees comprising the Natural Resources and Metal Ore Mining Industry with an existing Nevada 9.1% unemployment rate as of March 2013 (DETR)?

2. All existing unpatented mines and mining claims will no longer be exempt from Real Property Taxes and the land mass and its forecasted minerals residing on the ground or in the ground in its natural state, will be taxed as Real Property Tax, regardless if the property is undisturbed and in its virgin state.

   Current unpatented mine and mining claim property stakeholders registered at the Bureau of Land Management, whether for any of the (20) minerals stated prior, have spent a nominal amount of funds to obtain these rights and/or continue to hold these rights, in some cases, for more than (100) years passed on by generations as an inherited asset.

   Many of these real property right holders have managed to control their claims with minimal fee's required to continue their rights. Many claims are for recreational use by families for weekend excursions from populated areas into rural communities that capture the tourism type of income to its tax base.

   To place a burden on each real property right holder, whether for future commercial use or not, may have a negative effect on the federal, state and local economy as many right holders will relinquish their claim rights based on not willing to incur the costs above what has been levied to continue to occupy the property rights to ownership. Based on past data of the percentage of successful mines that have been developed from the percentage of unpatented mines and mining claims, it may be said that that percentage is very low.

   With that being said, will SB400 have a negative effect on the tourism economy, so dependent by this state, where a majority percentage of the existing claims will be released back to the Bureau of Land Management with no revenue to BLM or County?

It has been stated that the implementation of SJR15* and SB400 are not intended to create damages to counties dependent of NPOM revenues to help with special needs within the communities that normally would not have access to funding resources to offer their needed services into the community to offset the burdens placed on these communities by the presence of mining employees and their families. The NPOM has been a blessing in that it has allowed rural communities, with industrial minerals and precious metal mining operations, to offset impacts imposed by these mining operations within the community that hosts them.

This availability of funds has been the resource tool utilized to create harmony among mining operations and their communities. However, if and when NPOM revenues are lost, many community services currently offered will no longer be able to sustain service operations within their respected communities. We have seen these comments made in reference to statements of record provided by local hospital facilities and school districts. Healthcare and education are major initiatives receiving positive attention from our federal government, yet our state government could make decisions that would further this problem in Nevada.

On February 22, 2013, the State of Nevada Legislative Counsel Bureau drafted a response to Senator Michael Roberson, addressing questions the Senator had concerns with SJR15*. Brenda J. Erdoes, Legislative Counsel, addressed the Senator's questions with statements that do not reflect the same interpretation from the Mining Industries legal counsel. Therefore, the State of Nevada is under the perception that it has the right to continue to levy the Mining Industry with a tax to replace the lost revenues to the state and local governments from the current NPOM. The Mining Industry disagrees with the States opinion to levy any Special Tax based on current law AND not imposed and/or protected against, by the Nevada Constitution.

If the Mining Industry does not agree with Counsel Ms. Erdoes statements and refuses to pay a Special Tax outside of normal business operations for all business's in whole that is no longer justified in the Nevada Constitution, are local government going to suffer from the timeframe of years this issue could be in litigation? The answer is YES! And once this issue is settled, since NPOM have been collected a year in advance, the Mining Industry will need to be given an additional year after resolutions had been agreed upon before like-type payments would be made.

Lastly, what has been the percentage of local government success in collecting real property taxes from BLM managed real property right holders with no avenues to lien BLM held public lands or assets held by the right holder in different states and countries outside their markets? The answer is "VERY LITTLE COLLECTION PERCENTAGES HAVE BEEN GAINED."

The point being, you may find that a low percentage of success has been achieved by local governments to collect real property taxes on BLM managed real property assets, being able to lien assets outside of their markets due to budget constraints to travel and administrative costs to continue to lien assets every six months as required by law to be enforceable by Title Companies, etc.

Secondly, it is impossible to lien Bureau of Land Management issued property rights to unpatented mine and mining claim right holders related to SJR15* and SB400 initiatives expecting to impose new real property tax levies. This statement would pertain to BLM issued Oil and Gas Lease rights as well.

How long could the State and the Mining Industry be in litigation to resolve the dispute regarding NPOM taxes to be levied and how will this period of time, without such payments, have an effect on all local government finances, including our metropolitan areas, as well as our rural communities? Based on the last (5) years of NPOM's collected, the State's budget has increased by an average of 3.98 Percent. Can the state afford this loss as well?

State of Nevada - Department of Taxation **Net Proceeds of Mines Revenue (NPM)**	**2007-2008**	**2008-2009**	**2009-2010**	**2010-2011**	**2011-2012**	**Estimated Rev % Loss 5 Year Ave**
Total Paid by Mining Industry @ 5%	74,129,804	145,449,950	168,695,319	242,605,014	253,311,919	
Total State Fiscal Budget	4,632,233,269	4,182,178,734	4,220,648,952	4,474,208,984	4,691,887,917	
NPM % of Revenue to State of Nevada	**1.60%**	**3.48%**	**4.00%**	**5.42%**	**5.40%**	**3.98%**

Resource: State of Nevada Annual Budget Reports.

In conclusion,

The Geothermal and Gypsum Industry business and accounting practices of operational costs and allowable deductions against gross proceeds should be audited to compare to other industries as a quality control measure to potentially provide additional revenue to those counties in need.

The top four counties with the highest percentages of allowable deductions against gross proceeds of minerals need to audit each industry within its county lines to evaluate the difference in business and accounting practices as accustomed on average throughout all industries.

SB400 may push many or all of the existing (98) Nevada Mineral Mining Corporations to close their doors in Nevada and potentially layoff 28,300 Nevadan's based on their inability to produce profits acceptable to their investors, due to the new implemented real property tax burdens on unknown mineral values on the surface and/or in the ground in its natural state.

SB400 will have a negative effect on the tourism economy, so dependent by this state, where a dominant majority percentage of the existing unpatented mines and mining claims, if and when are released back to the Bureau of Land Management, with no revenue to anyone afterwards.

It is impossible to lien the mineral rights issued by the BLM office to right holders willing to pay a small fee to hold such rights annually with unknown amounts of potential minerals available in their natural state.

How long will litigation prevent the access to tax funds to replace those funds that are currently being paid by the Special Tax per NPOM's and what effects will it have on the budgets of the State and all local governments, including the metropolitan areas in the interim?

This litigation process and the lack of support to the local governments addressing the impacts imposed by the mining operations within their communities will create a negative working relationship between the local governments and mining operations staff, reversing the collaborated partnerships that have been created over years of supporting each other.

There has to be an answer to improve funding to educational initiatives. I would suggest assessing the districts educational budgets first, within each district, and make sure there is uniform spending per pupil on instruction, nutrition and welfare before looking outside to rectify budget shortfalls. Review the "Nevada Annual Report of Accountability" http://nevadareportcard.com/ available online per each county and school district and compare, overall, these areas of financial expenditure accountability identified in these reports; Instruction, Instruction Support, Operations, Leadership, and Total Expenditures.

What measures have been put into place to improve communications among all school districts to share assets, equipment, teacher county (foreign) exchange cross training within state boundaries, federal grant initiatives to address nutrition as a multiple county collaboration, etc.? Are farmers in the north providing fresh local grown foods to the schools in the south? Is there a website our school district can review available assets Clark County School District has available for sale so we don't buy outside the state?

Respectfully Submitted, Jim Garza

Jim Garza - Director – Community and Economic Development
White Pine County, Nevada

Marla Turner
5708 Solimar Lane
Las Vegas, NV 89130

Good afternoon Madame Chair and members of the Committee. Thank you for allowing me to speak today. My name is Marla Turner. I'm a native of Nevada and lifelong resident of Las Vegas. I'm here today to express my support for SJR 15.

We all know that when the mining industry's tax structure protections were written into the state Constitution back in 1864, Nevada was a very different place. The import of mining's contributions to the state and its place in the landscape of Nevada's economic well-being was huge, and made conditions conducive for the industry to successfully argue for such protections.

Today, mining continues to play a significant role, both economically and historically. However, the recognition that mining no longer needs such protections has been well-known to the state and its citizens for at least 25 years. In 1987, my step-father, Assemblyman Marvin Sedway declared, in his rather colorful way, that mining owners were not paying their fair share and began efforts to repeal its Constitutional protections. Two years later, Nevadans voted overwhelmingly – by 3:1 - in favor of Senate Joint Resolution 22 which increased mining's taxable contribution to 5% of its net proceeds but also had the consequence of limiting the state's ability to impose any other tax on the industry. Anyone who says the bill's sponsor Assemblyman Sedway was happy with that outcome does not remember our history, because he voted against the measure after fiercely objecting to the co-opting of his bill and virtual elimination of its original intent.

Fast forward to today. Nevada faces unprecedented budget shortfalls and simultaneous, desperate needs for revenue to address big and costly problems within our State: deteriorating roads and highways, an education system at the bottom in the nation, threats to public safety due to reduced workforces, and a myriad of efforts and programs to put our residents and the nation's hardest hit back to work.

So the question then, is how do we raise revenue in a way that causes the least distress for the most? I don't have all the answers, but surely, the solution begins with creating a level playing field that doesn't allow exceptions for those who don't warrant it or need it.

Mining owners believes they're paying plenty. According to the Nevada Department of Taxation, trans-national mining businesses made over $15 billion off gold finds in Nevada between 2010 and 2011, and paid about $200 million in tax to the state's general fund. That's an effective tax rate of **1.079%.**[ii] Compare that to gaming, which paid nearly $2 billion in taxes just last year. [iii] Yes, that's for one year.

I'm sure every business in the State feels exactly the same way, that they're paying plenty. Nevada residents feel like they're paying plenty, too, when they pay their property taxes or see a slice of their paycheck go to the federal government. And yet, no one but mining tries to get out of paying their fair share by basically saying, "I haven't before and I don't want to now."

Some mining advocates say lifting the taxation cap could have repercussions beyond the state's borders. Mining advocates claim the repeal will actually decrease mining's contributions to the state. That has

been found to be factually inaccurate by Nevada's non-partisan Legislative Counsel Bureau, which issued an extensive position on the subject this past February.[iv]

The needs of the State of have become dire and the reasons to protect mining have become moot. Many of mining's owners who our Constitution currently protects are, in many cases, foreign-based companies, who are getting rich off of Nevada's limited precious resources and taking their money out of Nevada. It's time to stop that.

Additionally, I believe the day will come when the proverbial well runs dry and mining industry owners pack up their belongings, leaving a bunch of unemployed people and holes in our ground in their wake. Nevada Governor Bob Miller said pretty much the same think in his 1989 State of the State speech: [v]

> *"The fact is this: mining does not pay its fair share to the state. A gold mine that would pay a million dollars in state and local taxes in Nevada pays $8 million in Colorado. And you know, that might be tolerable if the mines were taking a renewable resource from the ground. But they're not. One day, the ore will be gone. And so will the companies. And so will that source of income."*

We can't ever afford to continue giving mining owners protections that: (1) are no longer warranted; (2) discriminate against other industries not granted similar protections; and (3) allow that same industry to take their proceeds out of Nevada, but most *especially* not at a time like now, when the State is facing such significant revenue challenges. Nor can we continue to allow the mining industry to control the narrative and threaten the state with pulling up stake, like teenagers do, when told they have to clean their room.

I urge you to vote in favor of this SJR 15 so we can start asking mining owners to pay their fair share and welcome them into the same family where every other industry in our State lives.

---

[i] Nevada State Legislature, http://www.leg.state.nv.us/Division/Research/Voters/BallotQuestions/1998.pdf

[ii] Nevada Department of Taxation, Mining Oversight and Accountability Commission, http://tax.state.nv.us/...

[iii] Nevada Resort Association, NV Hotel-Casino Industry's Contribution to State General Fund Revenues - FY 2012, http://www.nevadaresorts.org/docs/benefits/02_taxes.shtml

[iv] Ralston Reports, March 5, 2013. http://ralstonreports.com/blog/legislative-lawyers-gang-63-go-ahead-and-tax-mining-much-you-want#.UYKonLVwo8H

[v] Nevada State Legislature, pps. 17-19, 1989, http://leg.state.nv.us/Division/Research/Library/Documents/HistDocs/SOS/1989.pdf

SJR 15 (2011)/Assembly Taxation, 5/2/2013

Madame Chair, members of the Assembly Taxation Committee, and staff. Good afternoon, I'm Guy Rocha, Nevada historian and State Archivist for 28 years until my retirement in Feb. 2009.

I'm here today to testify on why the mining industry was treated differently than other businesses regarding tax policy when Nevada's state constitution was adopted in 1864. The issue during the constitutional convention of adopting a uniform property tax for all business enterprises including mining--versus providing an exemption for mineral extraction--was very controversial and complex. This was the case despite the fact the Nevada constitutional delegates in the first and second conventions had used California's first constitution as its template which provided for a uniform property tax.

My testimony principally relies on the work of Portland State University Professor David A. Johnson. Professor Johnson, who completed his doctoral dissertation in 1977 at the University of Pennsylvania, and I worked together prior to his incorporating the dissertation into a book *Founding the Far West: California, Nevada, Oregon, 1840-1890.*

Briefly, the key to understanding what happened in Carson City during the second constitutional convention in July 1864 is the fact that the Comstock Lode and Nevada Territory was experiencing its first great economic depression.

Following the lead of the 1863 constitutional convention, the 1864 constitutional convention in a close vote initially passed a uniform property tax which did not exempt mining.

However, according to Prof. Johnson, "Opponents of the mining tax, [including influential mining attorney and lobbyist William M. Stewart, elected Nevada's first U.S. Senator and largely responsible for the current National Mining Law dating to 1872] mindful of the depression [in 1864] and its lessons, declared that such a clause not only meant certain defeat for the constitution, but, more importantly, 'the destruction and ruin of the paramount industry of our territory'."

(Please remember the operative term "paramount industry" because it has driven public policy and case law on Nevada mining until recently).

As delegate E. F. Dunne bluntly claimed "without capital, our mines are valueless. We have not, and never have had, the capital necessary to develop our mines, and we are, therefore, dependent upon foreign capital.'

"The interest of the mining industry, declared Charles DeLong, a leader of the anti-mining tax faction, was not separate and distinct from the interest of the merchant, businessman, laborer, mechanic or, for that matter, the farmer. . . . For it was the capital—capital from outside

Nevada—invested in these mines that had paid Nevada's laborers, patronized the territory's merchants, and created markets for ancillary enterprises."

'It has been paid to the farmer for the products he has taken to the city of Virginia to feed laboring men. . . . It has been paid to the mill owner for crushing quartz; it has been to the teamster for hauling lumber, it has been paid for improving streets and creating buildings . . . , [it] has been dispersed throughout the community. . . . [The mining corporations] are the bases of the prosperity and the wealth of our cities.'

The argument proved effective. After an evening of discussion, the delegates reconsidered a uniform property tax inclusive of mining. This time the delegates voted it down by a vote of 23 to 10 when the mining-county merchants and businessmen abandoned their previous position.

The critical language in Article X, "Taxation," reads ". . . secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds which alone shall be taxed . . . .

By the time of the September 7 statehood vote, the new constitution had become a sure panacea for economic distress. Upwards of ninety percent of the electorate voted for it, and Nevada, "Battle Born" during the waning days of the Civil War, became the 36th state.

Prof Johnson wrote, "With the depression and the emergence of the Bank of California regime, the day of marketplace individualism came to a close. The Nevada convention delegates, in their confrontation with a crisis in thought and economy, had reconciled the interests of the little man with those of corporate capital."

I find it supremely ironic that in revisiting the issue of mining taxation in Nevada almost 150 years after the constitution was adopted that the state has arguably experienced the worst economic crisis in its history--and juxtaposed today--the precious metal mining industry, and particularly gold-mining, continues to enjoy record profits.

Circumstances have dramatically changed since statehood. Mining, for almost 60 years, has not been Nevada's statewide paramount industry.

The contemporary mining industry makes it clear it does not want to be blamed and held accountable for the checkered environmental legacy of earlier mining companies. The abandoned open pit mines created by Anaconda in Weeds Heights and Houston Oil and Mineral in Gold Hill come readily to mind.

Granted today's mining companies are making a better effort to comply with federal, state and local laws and be more responsible corporate neighbors than many of their predecessors.

However, they still want to enjoy the legacy of privilege and protection represented in a mining tax policy and formula dictated by constitutional law--amended in 1989--and not statutory law.

The legislature should again pass SJR 15 and let Nevadans decide at the polls if they still want mining tax policy in the 21st-century specifically dictated in the state constitution.

If SJR 15 was passed by the voters, their elected representatives could address mining tax policy and tax rates when the legislature was in session and not contend with the daunting and lengthy process of legislators--or voters--taking years to amend the constitution to raise or lower mining taxes. Essentially, it would level the playing field when the state legislature pursues a broad-based tax system in 2015.

In the end, let 21st-century Nevadans decide if they want their elected representatives to decide mining tax policy and mining taxes or continue with a mining tax policy dictated by the state constitution first adopted almost 150 years ago under circumstances dramatically different than today.

Date: ~~March 26~~ May 2, 2013

To: Assembly Taxation Committee

From: Joe McCarthy, Comstock Residents Association

Subject: SJR 15 committee hearing

Thank you for allowing me to comment today on the importance of having the 2013 Nevada Legislature once again resoundingly pass SJR 15.

My name is Joe McCarthy, board member of the Comstock Residents Association, current resident of Silver City, a 35-year resident of Nevada. I am the former executive director of the Brewery Arts Center for nearly a decade and Carson City's economic development & redevelopment director for more than a decade. I've been honored to serve our great state throughout my career.

It is essential that we allow Nevadans, via the ballot box, to extract the mining industry from the preferential position of constitutional protection it currently holds. By once again approving SJR 15 and forwarding it on to the voters for their consideration, this legislature will be sending a positive message of wise governance and legislative responsibility. In fact, the message will be profound. It will be a clear, unequivocal statement that says: our elected officials believe in good public policy that levels the playing field for most businesses, large and small. And that you believe in fair, equitable taxation.

Here is a case in point of why equitable taxation would protect us. The environmental degradation and the unraveling of community life currently happening in your Virginia City National Historic Landmark is a perfect example of why the passage of SJR 15 is imperative. The Comstock communities and the historic landmark are currently under threat posed by out-of-state real estate developers and CPA's acting like miners and wreaking havoc on the land, just 10 miles from where we now sit. Irresponsible mining such as this, seems to come to Nevada, more often than not, when commodity prices start to bubble. These new miners relish

entering Nevada's mining business sector in part because they learn early on that mining gets special taxation treatment. Why wouldn't these new miners hope to exploit us. It could prove quite profitable, falling swiftly to the bottom line of the principals.

What do the residents and small local businesses on the Comstock get for such preferred treatment for these new miners? We get the chemical cocktail of full-scale, open-pit mining within the Virginia City National Historic Landmark, within the Carson River Mercury Superfund site and on top of prosperous residential and small business communities.

Our national landmark received its federal designation from the Secretary of the Department of Interior in 1961, an honor unrivaled in the history of Nevada's historic preservation successes. The landmark has evolved into a tourism powerhouse and a recreational jewel. Its assets include an impressive cultural landscape and the historic towns nestled in a stunning visual setting. Two of our most important, clean and and profitable industries, tourism and recreation, do not receive constitutional protections. But these new miners do, as does the entire Nevada mining industry.

So here we are, two of Nevada's most culturally rich towns, Silver City and Gold Hill, are in the path of open pit mining, as 17,000 plus beautiful acres of cultural landscape. To top that, these miners are planning to open pit mine within a Superfund site, a site if left undisturbed is a threat to no one.

This unseemly operation has rejiggered the political landscape in our neck of the woods. Many groups of disparate ideologies are working together to educate and advocate for genuine historic preservation & conservation of our towns and our Landmark.

We are usually polite and open-minded folks, at least we were, until the mining company announced its presence in 2010 and we immediately became concerned. We began meeting in small groups in various homes, at our community centers & walking, talking and gathering signatures on petitions (from young couples to grandmas) opposing open pit mining, 97 of the 114 registered voters in Silver City

alone, and to discuss what might happen if open pit mining begins on our doorsteps.

We are seriously outgunned financially. And, the subtle threats we've been receiving are repugnant. The blasting, the haul trucks on our streets, the buying up of property surrounding us, forcing down values and low-balling offers, mocking the residents. It has turned us into activists for the first time in our lives.

Our common language is our love for our community, our hopes for our families. We are not red or blue; we're Nevadans. Our unity comes from shared history. We know each other extremely well: soup nights, community garden work, our Volunteer Firefighters, Thanksgiving Day dinners, daily walks with dogs & children. Everyone who lives in the Comstock believes in the sanctity of "home." We are determined not to give up our homes, our way of life without a fight. But it just isn't right that writing or talking to our leaders has virtually no impact.

Yet, Comstock Mining seems to have unfettered access to our legislators, our policy makers, our local politicians, based on support that comes from a few measly donations they make to needy causes & the few citizens they've peeled off to join their ranks. They do this instead of spending the same resources on a comprehensive mine plan of operation or an programmatic EIS. Neither of which are in the offing.

Right now, Comstock Mining, Inc is leveraging your most important national landmark as an asset to raise Wall Street money and to profit from excavating the Comstock. They are creating a lasting mess, permanently scarring our precious hillsides, valleys, and waterways. It is a stain on our collective conscience. All the while, they enjoy unfair constitutional protections that limit their taxation exposure. Let's let the voters decide what's fair. Vote to approve SJR 15.

Amending the Nevada Constitution

Concerning

Taxation of the Net Proceeds of Mines,

1981 - 1989

Dana R. Bennett, PhD

Bennett Historical Research Services

January 2013

Approved by Nevada voters and President Abraham Lincoln in 1864, the Nevada Constitution directly addressed the taxation of mines in Section 1 of Article 10, colloquially referred to as the uniform and equal provision, by specifying that the proceeds of mines would be taxed at the same rate as property. During reform efforts in 1981, the Nevada Legislature decreased the property tax, and in the process, decreased the taxation of net proceeds. Unable to increase that tax without simultaneously increasing all property taxes, the Nevada Legislature proposed a constitutional amendment to separate the net proceeds tax from the rate assessed against real property, and at a Special Election in 1989, Nevada voters approved such an amendment. Attached are copies of the pre- and post-election constitutional provisions concerning the taxation of net proceeds. Using legislative records and contemporaneous articles published in Nevada's urban newspapers, this paper examines the legislative efforts from 1981 through 1989 that culminated in that vote.

Those actions spanned nearly a decade, although the constitutional amendment process typically takes five years from start to finish. The proposed amendment must be approved in identical form by two successive sessions of the Nevada Legislature, which meets in odd-numbered years, and subsequently approved by a majority of Nevada voters. Typically, that approval is sought at a General Election, which occurs in even-numbered years, but a Special Election may be called at any time for the purpose of approving constitutional amendments. In this particular case, the effort involved four legislative sessions, one General Election at which the ballot question failed, and one Special Election at which the question finally passed.

Early in the 1980s, when the amendment process began, Nevada's mining industry and Nevada's lawmakers enjoyed a relatively congenial relationship. The legislative conversation did

not engage in much of an examination of the constitutionality – or even the desirability – of the net proceeds tax. The discussion rarely even rose to the level of a debate. Mining industry representatives expressed a willingness to accept that the net proceeds tax would be more than doubled, and legislators welcomed additional revenues. The successful passage of the proposed change was not in doubt.

It failed, however, and revenue from the net proceeds tax remained startlingly low as gold mining in Nevada entered a period of significant expansion. A changing industry and a changing legislature resulted in two sessions of accelerating rancor between the two. The mining industry persistently protected the constitutional provision as urban lawmakers and a Governor angrily demanded a larger share of mining profits. By the time the 1980s ended, the Nevada Constitution continued to contain a provision for a net proceeds tax, but its rate had changed and the resulting revenue increased exponentially from just under $2 million in 1980 to over $36 million in 1989.[1]

The First Constitutional Amendment Process, 1981-1984

For well over a century, Nevada's tax system had relied heavily on assessments against property. By 1980, public outcry against the property tax, especially as Nevada's rapidly increasing population was driving an increase in property values, caused policymakers to be concerned that Nevada voters might follow California voters' recent and drastic restriction of that state's property tax. Nevada's 1980 ballot did include a similar question, but it failed on the

[1] *The Nevada Mineral Industry 1981* (Reno: Nevada Bureau of Mines and Geology, 1982), 13; *The Nevada Mineral Industry 1990* (Reno: Nevada Bureau of Mines and Geology, 1991), 10.

strength of policymakers' pledges to address tax reform in the 1981 session of the Nevada Legislature.

In his State of the State address, Governor Robert List (R) proposed to shift state government's reliance on property taxes to sales taxes. Declared a "bold" move, the tax reform package was essentially in place by the time local government budgets were due in March 1981.[2] Rural county and mining representatives, however, immediately recognized that one effect of the so-called "Tax Shift" would be a decrease in the net proceeds of mines tax as it was directly connected, through the Constitution's uniform and equal provision, to the rates applied against real property. With the reduction in property tax rates, revenue from the net proceeds of mines tax, which primarily benefitted the counties, would drastically decrease. The Nevada Mining Association's Board of Directors declared, in February 1981, that "[t]he mining industry in Nevada did not initiate, nor does it encourage or support a decrease in taxes on the net proceeds of mines."[3]

The 1981 Legislature, in which both houses were controlled by the Democrats, quickly determined that Governor List's proposal to increase the existing net proceeds tax was unconstitutional. Instead, the Senate introduced a resolution to amend the Constitution, launching the five-year process that would be required to assess a higher tax rate against net proceeds. More immediately, legislators sought to increase mining's contribution to the State through a tax on diesel fuel. The mining industry did not oppose the assessment because, as explained by Bob Warren, Executive Secretary of the Nevada Mining Association, mining

[2] "Bold message from List," editorial, *Reno Evening Gazette*, 23 January 1981.

[3] Robert E. Warren, Letter to Assembly Committee on Taxation, 19 May 1981.

representatives had committed to the Senate and Governor List to pay any new tax found to be constitutional.[4] Dubbed "conservative" by urban newspapers, the 1981 Legislature also offset the reduced property taxes with increases in taxes on sales, gas, liquor, and gaming (the first since 1967), and a number of fees, such as those for people who hunted, drove cars, or got married. Lawmakers anticipated that increased revenue from the higher rate applied against net proceeds would begin arriving in state and local coffers in 1985.[5]

During the two sessions that processed the proposed constitutional amendment, legislators and mining representatives freely discussed revenue estimates based on the application of a full 5 percent tax rate on net proceeds, although Mr. Warren cautioned, somewhat parenthetically, that some mines would pay less than the full rate. Added to Nevada's Constitution in 1936, the maximum ("cap") of 5 percent applied to the rate for both real property and net proceeds taxes. The proposal to separate the ad valorem rate from the net proceeds tax ensured that the cap remained in place. Both caps would be (and are) not-to-exceed rates, leaving it to the Legislature to impose any rate up to or at that amount. The difference would be in the assessment. The tax on real property was (and is) assessed at 35 percent of value. The tax on net proceeds was (and is) assessed at 100 percent of value. Mr.

---

[4] "City dwellers fare better with tax plan," *Reno Evening Gazette*, 14 February 1981; Senate Joint Resolution No. 21, introduced February 13, 1981; Assembly Committee on Taxation, Minutes, 19 May 1981, 2-8.

[5] Caution must be exercised when making assumptions about the Nevada Legislature based on party control. Major newspapers in Reno and Las Vegas branded the 1981 Legislature as "conservative," even though both houses were controlled by the Democrats. The Carson City newspaper further noted that the Assembly was strong and conservative; the Senate, weak and liberal. Martin Griffith, "1981's conservative legislature in review," *Reno Evening Gazette/Nevada State Journal*, 7 June 1981; Ed Vogel, "Lawmakers reflect on '81 session," *Las Vegas Review-Journal*, 7 June 1981; Chris Broderick, "A review of top bills OK'd by Legislature," *Las Vegas Review-Journal*, 7 June 1981; John Hayes, "Taxing, redistricting toughest issues," *Nevada Appeal*, 5 June 1981; "Bugout Time in Carson City: Hooray or Horrors?" and Cindy Scripps and Chris Woodyard, "Nevada Legislature Closes Longest Session," *Las Vegas Sun*, 5 June 1981.

Warren argued to keep the essence of Nevada's mine taxation process in place, pointing to a 1978 federal study that deemed a net proceeds tax as the best type of taxation "in terms of equity and progressivity."[6]

In 1983, Governor Richard Bryan (D), who had defeated Robert List partially on the growing unpopularity of his tax reform efforts, did not mention mining taxes in his first State of the State. The Legislature, in which, again, both houses were controlled by the Democrats, did not express any particular interest in the net proceeds tax. Within the first six weeks of the session, both houses had considered and passed, for the required second time and without opposition, the proposed constitutional amendment. The Assembly Committee on Economic Development, Mining, and Tourism, chaired by Assemblyman Bob Price (D-Clark), received testimony that Nevada's mining industry was struggling at that time, but expected to improve significantly by the end of the decade.[7]

The minutes from meetings in both sessions do not indicate much concern, either positive or negative, about the constitutional provision pertaining to mine taxation. Rather, it was generally agreed that the provision had offered stability to Nevada's mining companies and was instrumental in the continued economic development of Nevada. Additionally, other than an inquiry from Senator Bill Raggio (R-Washoe) about whether "the mining industry was prepared to assume any additional tax burden," there was not much discussion about

---

[6] Assembly Committee on Taxation, Minutes, 14 February 1983; Robert E. Warren, Letter to Assembly Committee on Taxation, 19 May 1981.

[7] Governor Richard H. Bryan, "State of the State," 19 January 1983, reproduced in the *Journal of the Assembly 1983* (Carson City: State Printing Office, 1983), 27-33. Senate Joint Resolution No. 21 of the 61st Session was passed by the Senate on 4 February 1983 on a vote of 20-0 and by the Assembly on 22 February 1983, on a vote of 42-0. *Journal of the Senate 1983* (Carson City: State Printing Office, 1983), 88; *Journal of the Assembly 1983*, 207. Assembly Committee on Economic Development, Mining, and Tourism, Minutes, 24 January 1983.

additional contributions from mining to state government while the constitutional amendment process unfolded.[8] The participants agreed that the details would be determined by the 1985 Legislature after the Constitution had actually been amended. In the meantime, they discussed revenue estimates that were exponentially more than the amount collected in 1981 because the proposed 5 percent cap would have more than doubled the rates that were in place in the early 1980s.

With no significant opposition in the Legislature, the effort to change the net proceeds tax was placed on the 1984 General Election ballot. The proposed constitutional amendment was relatively simple: the reference to net proceeds was to be deleted from the uniform and equal provision and a new section would be added to Article 10 to specify a tax on the value of the net proceeds of minerals. In total, that new section would have read as follows:

> *The legislature shall provide by law for the taxation of minerals, including without limitation coal, oil, natural gas and other hydrocarbons, at a rate not greater than 5 percent of their value as net proceeds.*

The proposed language did not specifically provide for allocations to the counties, which had traditionally been the primary recipient of revenue from the net proceeds tax, but neither did the original provision. Nor did it include a prohibition against the imposition of additional taxes on minerals. The limiting word "alone," which had been in the Constitution since 1864, was not included in the new language.[9]

---

[8] Senate Committee on Taxation, Minutes, 17 March 1985, 4.

[9] Senate Joint Resolution No. 21 of the 61st Session.

The mining tax question, one among 12 in total, generated only mild interest. Paid advertisements on either side of the question could not be located in Reno or Las Vegas newspapers published in the month before the election. An article in the Reno paper explained that, should the question pass, mining tax revenues were expected to increase 300 percent. Although opponents expressed concern that the language did not necessarily protect local governments, Senator Sue Wagner (R-Washoe) assured readers that the additional revenue would be directed to schools and local governments. Both the *Reno Gazette Journal* and the *Las Vegas Review-Journal* endorsed passage of the question without comment.[10] The *Las Vegas Sun* opposed it on the grounds that it "discriminates against the smaller counties because they would be hampered from collecting the much-needed money at the expense of the state, which is in a much better financial situation."[11]

With the election of the United States President also on the ballot, voter turnout was a respectable 82 percent. The mining tax question failed, however, receiving slightly more than 48 percent of the vote. It lost in every county except Washoe and Carson City. Post-election analyses of the defeat ranged from the Legislature's failure to "sell" its proposed constitutional amendments to voters' distrust of government to misguided opposition from school districts. Mr. Warren surmised that voters did not understand the measure.[12] Likely, the voters understood the measure quite well, and the amendment's defeat resulted from the combined

---

[10] Tom Gardner, "Money at heart of most state ballot questions," *Reno Gazette-Journal*, 5 November 1984; "Recommendations in races reviewed," *Las Vegas Review-Journal*, 4 November 1984; "Gazette-Journal endorsements in this election," *Reno Gazette-Journal*, 5 November 1984;

[11] "The SUN recommends: some ballot questions," *Las Vegas Sun*, 2 November 1984.

[12] John Hayes, "Experts stumped by vote on issues," *Las Vegas Review-Journal*, 8 November 1984.

opposition of three kinds of voters: those who opposed tax increases of any sort; those who opposed a constitutional provision specifically to limit mining taxes; and those who were concerned, after having experienced the effects of the Tax Shift, about the possibility of local government funds being siphoned for state government purposes.

The Interim Session, 1985

The 1984 loss stunned legislators and the mining industry, but other election outcomes signaled that the 1985 Legislature would not address the issue. The Republicans held the majority in the Assembly for the first time since 1971, and the Speaker, Bill Bilyeu (R-Elko), hailed from a mining county. In the Senate, the Democrats' decades-long dominance was eroding. Conservative Republicans from Clark County, Ann O'Connell and Ray Rawson, joined rural Republicans Dean Rhoads and Ken Redelsperger, both from mining-centric counties, to win seats previously held by Democrats. The Republicans had not controlled the upper house since 1963, but the 1984 election provided the foundation for them to regain control in 1987 and hold it, with one exception, throughout the rest of the 20th century.

On the Assembly side, Clark County representatives included Democrats who were far less conservative than their predecessors. Dr. Marvin Sedway (D-Clark) was in his second session in the Assembly and as a member of the Assembly Committee on Ways and Means. Myrna Williams (D-Clark) was in her first session and seated on the Assembly Committee on Taxation. Despite the addition of more liberal members, the 1985 Assembly was, as characterized by Speaker Bilyeu, "very cautious in terms of spending and taxes."[13]

[13] "Question 12 to reappear in Legislature," *Las Vegas Review-Journal*, 8 November 1984.

No one introduced legislation that proposed to alter the State's method of taxing mining. But legislation successfully proposed by Nevada's new Commission on Economic Development resulted in a significant tax benefit to the mining industry. Allowed to defer the sales tax on purchases of expensive equipment, some mining companies could reduce, albeit temporarily, the amount of sales taxes they paid to local governments. The deferral later added to the perception that the mining industry shirked its tax responsibilities in Nevada.[14]

With the price of gold rising again – it increased nearly 15 percent from 1985 to 1986 and continued to rise – mining began to realize the boom that had been predicted earlier in the decade. Nevada's gold production had nearly doubled in that same time period. Because the net proceeds tax had not been successfully amended, however, the boom was not adding much revenue to the coffers of state and local governments.[15]

With a rapidly increasing population, especially in Clark County, and with expanding government services adversely affecting the State's budget, legislators began to consider other sources for revenue. By the time the 1987 session began, Assemblyman Sedway, newly-chosen Chairman of the Assembly Committee on Ways and Means, had decided that the source would be Nevada's gold mines. He was joined in his efforts by Assemblywoman Myrna Williams, who would be Speaker Pro Tempore in 1989, and Clark County Democratic Assemblymen Matthew Callister, Bob Gaston, and Jim Spinello, all first elected in 1986. Together with other Democrats

[14] Assembly Bill 678 (Chapter 623, *Statutes of Nevada 1985*) authorized the deferral of the payment of sales taxes in certain situations. Assembly Committee on Taxation, Minutes, 31 January 1989.

[15] Memorandum and attachments from Mark Stevens, Fiscal Analyst, Legislative Counsel Bureau, to Assemblyman Marvin Sedway, 5 February 1987.

from Las Vegas and Reno, they proved to be formidable adversaries of mining during the next two sessions.

The Second Constitutional Amendment Process, 1987-1989

The ultimately successful process to amend the constitutional provision governing the net proceeds tax began during the 1987 session, continued into the 1989 session, and culminated with a vote of the people at a regularly-scheduled election on May 2, 1989. It was a complex, hotly contested process. In both sessions, legislators targeted the mining industry on a number of fronts with the primary goal of extracting additional revenue for state and local governments. The various bills were heard in protracted committee hearings that featured piles of data, reports, and legal opinions and lengthy debates characterized by anger, accusations, and vitriol. By the time Nevada's longest legislative session in history ended on July 1, 1989, the mining industry was subject to much higher net proceeds tax rates and the new requirements of a self-funded reclamation program.

During both sessions, the Governor was a Democrat, and the Democrats enjoyed a commanding majority in the Assembly, but the Republicans firmly controlled the Senate. The chairs of the mine taxation subcommittee in each house vividly illustrated how far apart the two houses were on the issue in 1987. In the Assembly, the subcommittee chair was Assemblywoman Williams who frequently castigated mining representatives and demanded that they identify "a legitimate way to increase [their] contribution to the state of Nevada."[16] In

[16] Assembly Taxation Subcommittee on Mining, Minutes, 15 May 1987, 9.

the Senate, the subcommittee chair was Senator Ann O'Connell (R-Clark County), a fierce and effective opponent of any kind of taxation.

1987 Session

With his aggressive and blunt style, Assemblyman Sedway took the lead for the large group of Assembly members – mostly Clark and Washoe County Democrats with a couple of Clark County Republicans – who supported the concept of increasing mine taxation. His first salvo against the industry was fired in the form of a proposed fee of $16.50 on each ounce of gold produced in Nevada, the legislation for which was cosponsored by more than half of the Assembly members. Assemblyman Sedway presented a substantial amount of data to demonstrate his assertions that the big mining companies were headquartered out of state, realizing substantial profits, and paying more taxes in other states than they did in Nevada.

There was no mistaking the primary target of Assemblyman Sedway and his colleagues. Assemblyman Sedway's proposed fee, which the mining industry dubbed an unconstitutional severance tax, would have been imposed in addition to the net proceeds tax. Assemblywoman Williams confirmed their position when she stated that "it was not our intention, ever, to hit the small miners, the miners of minerals that don't produce the kinds of profits that gold produces."[17]

At the hearings on the gold fee bill and other mining-related legislation, the argument quickly centered on competing interpretations of the constitutionality, and potential reach, of mine taxation and the historic development of the net proceeds provision. Legislative Counsel

[17] Assembly Taxation Subcommittee on Mining, Minutes, 15 May 1987, 18.

Bureau attorneys drafted at least one legal opinion and corresponding legislation that provided routes for imposing additional fees on mining. Nevada's Department of Taxation testified that a tax on gross revenue – as opposed to gross proceeds – was constitutional. An academic historian and a political scientist were invited to bolster the Assembly members' assertion that the constitutional clause had the primary purpose of protecting the industry from taxation.

To argue the position that additional taxes or fees could not be imposed solely on mining and that the constitutional provision actually placed an additional tax burden not borne by other industries, the Nevada Mining Association contracted with Howard Winn, a highly respected mining and tax expert, and Frank Daykin, the Legislature's recently-retired Legal Counsel. An academic economist provided detailed reports and analyses, and individual mining companies deployed their senior executives and attorneys. As they held to their opposition against industry-specific taxes and fees, mining representatives continually repeated their support for, and pledge to pay, a broad-based business tax.

Dueling legal opinions led to threats of legal action. Assemblyman Sedway threatened that, if his bill failed, he would "support and organize an initiative and a referendum that will be more onerous than the 'Jim Dandy' tax gold fee that [he] had proposed."[18] Mining representatives countered with the specter of lengthy, expensive litigation against the State if it passed. After weeks of lengthy hearings, the mining industry supported the bipartisan introduction (including Assemblyman Sedway) of a proposed amendment to the net proceeds

[18] Assembly Committee on Natural Resources, Agriculture and Mining, Minutes, 23 March 1987, 3. "Jim Dandy" referred to a popular 1956 song in which a man named Jim Dandy comes to the rescue of damsels in distress. The nickname became attached to Assemblyman Sedway's bill because he proposed it as the main solution to the State's budget crisis in 1987 and beyond.

constitutional provision. Assemblyman Paul May (D-Clark), Chairman of the Assembly Committee on Taxation, immediately stalled its progress, however, declaring that it would be impossible for the voters to understand the proposal.[19]

In the meantime, the Jim Dandy bill came up for a final vote in the Assembly, triggering a bitter floor fight. Amended to reduce the proposed fee to $11 per ounce, the bill ultimately passed with a slight majority of 27 Assembly members, most of which were urban Democrats. But neither the Clark County Delegation nor the Democratic Caucus was cohesive, and members of both joined rural Republicans in voting "no." Key opponents included Assembly Majority Whip Bob Sader (D-Washoe) and Speaker Joe Dini (D-Yerington). Within one week of the bill's passage in the Assembly, another Assembly bill was introduced to eliminate the statutory deductions from which net proceeds was calculated, and the Jim Dandy bill was indefinitely postponed by the Senate Committee on Taxation, chaired by Senator Ken Redelsperger (R-Nye).[20]

With less than two months left in the 1987 session, yet another proposal to amend the Nevada Constitution surfaced in the Senate. Drafted by Mr. Daykin at the request of the mining industry, Senate Joint Resolution (S.J.R.) No. 22 was introduced by the Senate Committee on Taxation and quickly processed. In its final form, the proposal sought to achieve the following:

- Disconnect the net proceeds tax from the rates imposed on real property;
- Maintain the property tax cap of 5 percent on the net proceeds tax; and

[19] Assembly Committee on Taxation, Minutes, 5 May 1987, 15.

[20] *Journal of the Assembly 1987* (Carson City: State Printing Office, 1987), 676-687; Assembly Bill 658 was introduced on April 1987 by the Assembly Committee on Taxation. It was referred to and died in that committee. Senate Committee on Taxation, Minutes, 30 April 1987.

- Provide for revenue distribution to local governments.

Mining representatives estimated that the new tax rate would generate up to 300 percent more revenue than the existing process. Joseph Murray, President of the Nevada Mining Association, stressed that "[n]o other industry in Nevada's history has stepped forward – as we also did in 1981 and 83 – with such a proposal for a major increase in its taxes."[21]

Although the Assembly balked at the proposal, the Senate would not be swayed. On June 12, 1987, the Assembly reluctantly passed S.J.R. 22 and ensured that the battle would continue in 1989. With the mining industry's pledge to campaign vigorously to ensure that, this time, Nevada voters would approve the amendment, the Legislature adjourned *sine die* less than a week later.

Unlike 1981, however, the 1987 session ended with an agreement in place for the mining industry to accelerate the payment of the net proceeds taxes based on the expected new rates. As a means to provide more immediate revenue to the State, the industry initially offered $10 million for each year of the coming biennium. Mr. Murray testified that legislative leadership – specifically Joe Dini (D-Lyon) Paul May (D-Clark), Lou Bergvin (R-Douglas), Jim Gibson (D-Clark), Ken Redelsperger (D-Nye), and Bill Raggio (R-Washoe) – had determined that mining's "fair share" of the state budget shortfall was $20 million. Precedent for this option had already been established by earlier Legislatures' acceptance of accelerated payments from the gaming industry and the insurance industry.[22]

---

[21] Assembly Committee on Taxation, Minutes, 10 June 1987, 5.

[22] Assembly Taxation Subcommittee on Mining, Minutes, 25 May 1987, 8; Assembly Committee on Taxation, Minutes, 9 June 1987, 16.

Assembly members managed to convince the mining industry to pay an additional $500,000 in the second year of the biennium and to agree, in a written, legally-binding document, that they would not seek reimbursement of any of these payments, regardless of what happened to the ballot question. The final package was encompassed in a bill sponsored by Assemblyman Sedway and cosponsored by Assembly Democrats from Clark County, including Assembly members Gaston, May, Price, and Myrna Williams. Also initially drafted by Mr. Daykin, and finally approved on the next-to-last day of the 1987 session, the bill allowed these Assembly Democrats to tell their Las Vegas constituents that they had increased the amount of taxes paid by mining in rural Nevada and that it was "fair to the people of the state and the mining industry."[23]

1989 Session

The agreement immediately increased the amount of net proceeds tax revenue available to the State. The price of gold and mining's gross revenues continued to rise as the State faced additional budget deficits, however, priming the bitter fight from the 1987 session to be repeated – and intensified – in 1989.

It began with the first message from Acting Governor Bob Miller (D) to the Legislature. In his State of the State, he assailed the industry, insisting that out-of-state mine owners were greedily degrading Nevada's environment for their own excessive profits. Contending that mine owners daily removed $3.5 million in gold from Nevada without paying its "fair share to the state," Acting Governor Miller graphically blamed the gold mining industry alone for revenue

[23] Assembly Committee on Taxation, Minutes, 9 June 1987, 13.

shortfalls that threatened the education of Nevada's children. His Executive Budget, submitted with his message, relied on $50 million in revenue that would only appear with the passage of S.J.R. 22 by both the 1989 Legislature and the voters, but his message indicated that he would seek more than that $50 million.[24]

The constitutional amendment approved by the 1987 Legislature was considered in a joint hearing of the Senate and Assembly Committees on Taxation in the Old Assembly Chambers of the State Capitol Building on February 2, 1989. Legislators and Acting Governor Miller, represented by his Chief of Staff, Scott Craigie, agreed that S.J.R. 22 should move quickly. They also agreed to designate May 2, 1989, the date of a regularly-scheduled municipal election, as a Special Election at which Nevada voters would consider amendments to the Constitution. In addition, they debated the parameters for statutorily implementing the amendment and collecting the $50 million already included in the budget. Early approval of a bill to implement the constitutional amendment would help voters understand that their action would, indeed, increase mining tax revenue.

Mr. Craigie insisted that $50 million was not a large enough share of mining's substantial profits. He urged the Legislature to repeal all of the statutory deductions but one – "the actual cost of extracting the mineral" – and generate another $63 million. Later, he declared that early

[24] *Journal of the Assembly 1989* (Carson City: State Printing Office, 1989), 47-48; Senate and Assembly Committees on Taxation, Joint Meeting Minutes, 2 February 1989, 3.

action by the Legislature and the Governor "should not have given anyone the impression the tax environment was 'frozen.'"[25]

Also causing a stir at the joint hearing was Steve Wynn, the Chairman of the Golden Nugget in Las Vegas, whose provocative diatribe against S.J.R. 22 resulted in "confused legislators, a shocked Gov. Bob Miller, and some angry miners." His incendiary testimony damaged the pre-session agreement between representatives of the gaming and mining industries not to become involved in the other's legislative battles over industry-specific taxes. William G. Bennett, the Chairman of Circus Circus, moved quickly to express the gaming industry's support for S.J.R. 22 and keep gaming taxes out of legislators' calculus for additional revenues. He carefully appealed to both sides of the argument by commending the development and expected outcome of the proposed net proceeds amendment while noting that "Nevada may at some point in the not too distant future decide that tax policy should not be incorporated into our Constitution."[26] The 1989 Legislature did not increase Nevada's gross gaming fee.

Four days after the joint hearing, Assemblyman Sedway, again the powerful Chairman of Ways and Means, formally declared "Bomb the Miners Week." With cosponsors Myrna Williams, Matthew Callister, and Jim Spinello, Assemblyman Sedway introduced five bills – one on each day of the week – targeted at the gold mining industry. On Monday, the bill proposed

---

[25] Senate and Assembly Committees on Taxation, Joint Meeting Minutes, 2 February 1989, 16; Assembly Committee on Taxation, Minutes, 2 March 1989, 13.

[26] Senate and Assembly Committees on Taxation, Joint Meeting Minutes, 2 February 1989; Letter from William G. Bennett to Senator Charles W. Joerg, 7 February 1989; Jon Ralston, "Wynn's attempts to trump fellow execs stir gaming pot," *Las Vegas Review-Journal*, 10 February 1989.

to establish a mining reclamation program; on Tuesday, a fee for the use of cyanide; on Wednesday, a repeal of mining's eminent domain authority; on Thursday, a shift from net proceeds to gross; and on Friday, a new state agency to verify the accuracy of mines' net proceeds calculations. Rod Higgins, Executive Director of the Nevada Mining Association, attempted to minimize the legislation by characterizing Assemblyman Sedway's efforts as a "vendetta" against the industry for contributing to the Assemblyman's Republican opponent during the 1988 election.[27]

Although the Legislature quickly processed the necessary legislation to get the question of amending the Constitution in front of the voters, the Assembly Democrats did not drop the subject. A reclamation bill introduced by Assemblywoman Vivian Freeman (D-Washoe) and "Bomb the Miners Week" ensured that the topic of Nevada's mines remained on the legislative agenda and in the public eye for weeks leading up to the election. Assemblywoman Freeman's bill was the subject of a number of hearings throughout April and March.

Also in March, Assemblyman Callister introduced legislation to begin the constitutional amendment process again, regardless of the outcome of the election. This time, the proposal would delete from the State's Constitution any reference to mining taxation. Co-sponsored by 19 Clark County Democrats, the resolution was discussed a number of times throughout May and June, including at a meeting in Las Vegas. It never gained enough support to be voted out of the Assembly Committee on Taxation. [28]

---

[27] Jane Ann Morrison, "Sedway suggests mining tax increase," *Reno Gazette-Journal*, 10 February 1989.

[28] Assembly Committee on Taxation, Minutes, 18 May 1989; Assembly Committee on Taxation, Minutes, 25 June 1989, 3-4.

Near the end of March, Acting Governor Miller signed the legislation that established a sliding scale application of the net proceeds tax. By approving the enabling legislation for the proposed constitutional amendment before the election, lawmakers sought to assure Nevada voters that their action would result in the collection of increased revenue from mining. The Assembly again signaled that the election would not end the debate over mining taxation by amending, with the Senate's concurrence, the following statement into the enabling legislation:

> *The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide the opportunity for this and other legislatures to assess a tax on the net proceeds of minerals.*

As promised, the mining industry aggressively campaigned in favor of the amendment, and the question passed easily with approval in every county and statewide passage at a 3-to-1 margin.[29]

On the same day that Nevada voters amended the Constitution, Assemblyman Sedway inadvertently, but vividly, demonstrated that the election would not extinguish his zeal. Lighting a cigarette while seated at his desk on the Assembly floor, he accidentally set fire to his beard.[30] Throughout the rest of the session, the often-heated Assemblyman and many of his Democratic colleagues continued to launch efforts to increase the revenue generated by the net proceeds tax and institute additional fees on mining.

---

[29] Assembly Committee on Taxation, Minutes, 7 March 1989; *Journal of the Assembly 1989* (Carson City: State Printing Office, 1989), 334; "Overwhelming majority backs increase plan," *Reno Gazette-Journal*, 3 May 1989.

[30] "Fiery lawmaker beats back blaze in beard," *Reno Gazette-Journal*, 3 May 1989.

Proponents of increased mining taxation continued to base their argument on the production of gold mines and state government's need for additional revenue. Opponents continued to insist that mining profits were volatile and that increased mining taxation inappropriately singled out one industry to bear government's burden. Opponents claimed that the mining industry would vanish from Nevada; proponents scoffed. Minerals were geologically located within the boundaries of the State of Nevada; therefore, they reasoned, the mining industry physically could not take their business elsewhere. Proponents demonized non-Nevadans benefitting at Nevada's expense; opponents emphasized mining companies' deep roots in the state. Proponents insisted that urban taxpayers were subsidizing rural residents; opponents asserted that excessive mine taxation would destroy rural communities. Mountains of testimony and data piled up on each side of the debate.

Essentially, Assemblyman Sedway and his colleagues defined mining's "fair share" as a substantial portion of mining companies' profits. The mining industry defined "fair share" as a portion of Nevada's revenue requirements in proportion to the industry's employment in the state. Regardless of the authority of the data or the eloquence of the experts, these two positions could not be reconciled to the full satisfaction of both sides.

Two factors tipped the scales in favor of the resolution developed by the 1987 Legislature. One was the preliminary release of the comprehensive Price Waterhouse/Urban Institute study of Nevada's tax structure, the product of a bill introduced by Assemblyman Sedway in 1987. First on the list of its policy directions about the taxation of mining was this statement: "The current net proceeds tax should be retained as the primary method of taxing

mining."[31] Although the study's coordinator, Robert D. Ebel, testified against including specific taxes in a state's constitution, legislators were persuaded by that statement. Senator Bob Coffin (D-Las Vegas) noted that the study's chapter on mining taxation sufficiently persuaded him that the Legislature should retain the process of taxing mines on their net proceeds.[32]

The second factor involved legislators who felt "duty bound" to abide by an agreement made during the 1987 session. As a former Senator explained, representatives of the mining industry had agreed to the amended constitutional provision and to accelerating the tax payments in return for a pledge from Governor Bryan and key legislators not to approve additional tax increases on mining.[33] Such factors contributed to the failure of any additional proposals to amend the Constitution yet again or to further increase taxes solely on mining.

By the end of the 1989 session, the net proceeds tax had been separated from other property taxes, and Nevada's most productive mines were subject to the highest rate of taxation authorized by the newly-amended Constitution. In addition, the Legislature had developed a reclamation program to be funded through mining fees. The approved legislation incorporated elements from the bills introduced by Assemblyman Sedway and Assemblywoman Freeman, but neither were given official credit. The ultimately successful bill was introduced by the Assembly Committee on Natural Resources, Agriculture and Mining, chaired by

---

[31] Robert D. Ebel, editor, *A Fiscal Agenda for Nevada: Revenue Options for State and Local Government in the 1990s* (Reno: University of Nevada Press, 1990), 22. In its pre-published form, this report was discussed at a number of meetings of the Assembly and Senate Committees on Taxation.

[32] Senate and Assembly Committees on Taxation, Joint Meeting Minutes, 23 February 1989, 14.

[33] Bob Ryan, "Mining tax law changes put legislators in a real bind," *Las Vegas Sun*, 6 February 1989.

Assemblyman Ernie Adler (D-Carson City) who had taken a more moderate position on mining taxes than had many of his caucus colleagues.[34]

By 1991, the composition of the Legislature had changed again. Assemblyman Sedway had passed away from cancer, and a substantial number of legislators had lost their bid for re-election due to voters' anger over a debacle concerning legislators' retirement benefits. The Democrats held a slight, two-vote majority in the Senate, but the Democratic hold on the Assembly had been significantly reduced to one vote. Republicans had gained eight seats, including the one Assemblyman Sedway had held for most of the 1980s.

Conclusion

The effort in the 1980s to amend the net proceeds tax did not start out as a constitutional story. It was first framed as a reasonable adjustment by a responsible industry after publically-demanded property tax reform had inadvertently reduced the industry's taxes. That adjustment failed, coincidentally, just as gold mining boomed in rural Nevada and state revenues could not keep up with the population growth in urban Nevada. Miniscule payments of net proceeds tax helped to fuel a growing antagonism toward an industry that was becoming increasingly lucrative. Lawmakers focused sharp attention on that industry, seeking not "to kill the golden goose," as a Clark County legislator explained, but "to pluck a few more feathers."[35]

---

[34] Assembly Bill 958 was approved by the Assembly and the Senate without opposition and signed by Governor Miller between June 23 and 28, 1989. *Journal of the Assembly 1989*, 1903; *Journal of the Senate 1989* (Carson City: State Printing Office, 1989), 1523; Chapter 599, *Statutes of Nevada 1989* (Carson City: State Printing Office, 1989), 1281.

[35] Remarks by Assemblyman Bob Price (D-Clark), Chairman of the Assembly Committee on Economic Development, Small Business, and Tourism. *Journal of the Assembly 1987* (Carson City: State Printing Office, 1987), 687.

In 1987, the argument to amend the provision began to turn on an assumption of some kind of constitutional privilege. Engaging an enduring Nevada theme of outsiders exploiting the state's resources, many legislators insisted that the Constitution unfairly protected mining from taxation. The Nevada Mining Association, the Nevada Miners and Prospectors Association, large mining corporations, and small mine owners marshaled significant amounts of data and cogent legal arguments in an effort to demonstrate that, rather than protection, the provision represented mandatory and additional taxation to which no other Nevada industry was subject. Industry representatives opposed, however, the complete removal of the net proceeds provision from the Constitution. In a 1989 discussion with a mining representative about the "image problem" created by the industry's insistence on maintaining a constitutional provision, Assemblyman Callister observed that "[t]he preservation of [the industry's] unique treatment is what creates the appearance of some preferential treatment."[36]

As the debate focused on the constitutional provision, disagreement about its effect generated rage and resentment, which visibly emanate from the hundreds of pages of testimony and floor speeches recorded during the 1987 and 1989 sessions. Urban legislators were furious; rural legislators were offended; and mining industry representatives were angry, sometimes to the point of belligerence. Friction between lawmakers and the mining industry continued to the end of the 1989 session nearly two months after Nevada voters substantially altered the taxation of net proceeds. One result was the passage of a mining reclamation bill that levied fees against certain mining operations and, together with the newly-amended

[36] Senate and Assembly Committees on Taxation, Joint Meeting Minutes, 2 February 1989, 37. Taxes specific to gaming and insurance were established by the Legislature, not the Constitution.

constitutional provision, did "pluck a few more feathers" from the mining industry.[37] Although the debate about the meaning of the net proceeds provision was not resolved by the end of the 1980s, state and local governments began to receive significantly more tax revenue from the mining industry.

[37] "Assembly leaders hint at need for future business tax," *Las Vegas Review-Journal*, 1 July 1989.

NET PROCEEDS TAXATION IN ARTICLE 10 OF THE NEVADA CONSTITUTION

The provision as it appeared during the 1980s:

Section 1

1. The legislature shall provide for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on each patented mine during the year, in addition to the tax upon the net proceeds.

Effective May 2, 1989:

Section 1

1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.

Section 5

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.
2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.
3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

SOURCES CONSULTED

Assembly History. Carson City: Nevada Legislature, 1981-1989, biennially.
Ebel, Robert D. editor. *A Fiscal Agenda for Nevada: Revenue Options for State and Local Government in the 1990s*. Reno: University of Nevada Press, 1990.
Index and Tables of Bills and Resolutions Introduced in the Senate and Assembly. Carson City: Legislative Counsel Bureau, 1981-1989, biennially.
Journal of the Assembly. Carson City: State Printing Office, 1981-1989, biennially.
Journal of the Senate. Carson City: State Printing Office, 1981-1989, biennially.
Nevada Legislators, 1861-Current. Online database. Research Library. Legislative Counsel Bureau. (http://leg.state.nv.us/dbtw-wpd/LegSim.htm)
The Nevada Mineral Industry. Reno: Nevada Bureau of Mines and Geology, 1979-1990, annually.
Senate History. Carson City: Nevada Legislature, 1981-1989, biennially.
Statutes of Nevada. Carson City: State Printing Office, 1981-1989, biennially.
Summary of Legislation. Carson City: Research Division, Legislative Counsel Bureau, 1981-1989, biennially.

Newspapers

Las Vegas Review-Journal, Las Vegas, Nevada, 1980-1989
Las Vegas Sun, Las Vegas, Nevada, 1980-1989
Nevada Appeal, Carson City, Nevada 1980-1989
Nevada State Journal, Reno, Nevada, 1980-1983
Reno Evening Gazette, Reno, Nevada, 1980-1983
Reno Gazette-Journal, Reno, Nevada 1984-1989

Committee Minutes

Assembly Committee on Taxation, 1981-1989, biennially
Assembly Committee on Economic Development, Tourism, and Mining, 1983
Assembly Committee on Natural Resources, Agriculture and Mining, 1987
Senate Committee on Taxation, 1981-1989, biennially

Bills

1981: Assembly Bills 369, 607; Senate Joint Resolution No. 21
1983: Senate Bill 29; Senate Joint Resolution No. 21 (1981)
1985: Assembly Bills 398, 678
1987: Assembly Bills 161, 658, 872; Assembly Joint Resolutions No. 39, 40; Senate Bills 563, 564; Senate Joint Resolution No. 22
1989: Assembly Bills 172, 178, 190, 208, 315, 770, 815, 866, 958; Senate Bill 61; Assembly Joint Resolutions No. 13, 21; Senate Joint Resolution No. 22 (1987); Senate Resolution No. 6

FROM GIM HOLLISTER, JR.,
RESIDENT OF GENOA, NEVADA:

I won't repeat all of the important facts that the Progressive Leadership Alliance of Nevada has provided you about the wisdom to pass SJR15, but I would like to emphasize to the committee that people opposing this bill's purpose, to allow the Nevada Legislature to adequately tax mining without being constrained by outdated constitutional restrictions, are completely off the mark when they state that any tax increases would force mining out of our state which is a holy grail when it comes to gold resources especially.

I bring evidence of SJR15 opponents' unnecessary tax fears today from the Behre Dolbear Group who have been respected Minerals Industry Advisors to mines since 1911 and have offices all over the globe. Year after year, in their annual report, they explain the same fact (and I quote from page an excerpt in their latest 2013 report which I will submit to the committee):

> "The total taxes applicable to a mining project – duties and imposts, income taxes, royalties, and severance and excise taxes – are considered in this [Tax Regime] section. Behre Dolbear's experience is that once the total 'government take' from combined taxes reaches 50%, a mining project's economic viability, during periods of normal commodity pricing, is threatened."

The most profitable mining companies in Nevada paid a little over 1% in mining taxes to the general fund in terms of their gross receipts and some taxes in sales tax and property tax, but they pay nowhere near a 50% amount on their profits and are not near a tax of over 5% on gross receipts which even the Northwest Mining Association in 2012 said it would take to adversely impact investment in mining.

In summary, don't accept Mining's bluffs to leave our mineral-rich state like those who, I'm afraid, are simply much more gullible. In fact, the same advisory board Behre Dolbear stated that in 2013, the country of the United States was the only country ranked higher for mining in 2013 because and I quote, "Due to the current political stalemate and its inability to raise taxes, the United States rating increased in this year's survey."

Assembly members, please pass SJR15 again this session and prove that Nevadan Legislator's hands will be no longer tied when it comes to taxing the mines that profit so richly from our very valuable minerals.

Thank you.

Assembly Committee: Taxation
Exhibit: N Page 1 of 1 Date: 05/02/13
Submitted by: Graham Hollister, Jr.

SUPPORT EMAIL STATEMENTS RECEIVED RE: SJR 15*

From: **Larry LeBlanc** <larryjleblanc@gmail.com>
Date: Thu, May 2, 2013 at 5:11 PM
Subject: SJR15
To: Irene Bustamante Adams <ibustamanteadams@gmail.com>, Aaron.Ford@sen.state.nv.us

I am in favor of business paying their fair share. Mining has enjoyed special treatment which is long overdue for change. Don't let this issue die in this session.

Larry J LeBlanc
LV NV 89103-1624

``````````````````````````````````````````````````````

Vin Agamenone <vinja71@yahoo.com>

My name is Vince Agamenone of Lyon County. Thursday's hearing ended with no time left for other remarks. You instructed me to email you my remarks which are as follows:
*********

I'm a member of Occupy Carson City, a group of peaceful activists & concerned citizens. Since 2011, one of our goals has been to see that the mining industry pay a FAIRER share of the taxes in Nevada.

In December 2011 we presented our support for SJR15 to both the Nevada Oversight & Accountability Commission and the Economic Forum who explained that State revenues continued to be low. We also submitted support of SJR15 to both Democrats & Republicans for their State party platforms.

Passage of SJR15 would rescind unnecessary constitutional privileges for the mining industry and we urge passage this 77th session.

``````````````````````````````````````````````````````


Assembly Committee: Taxation
Exhibit: O Page 1 of 1 Date: 05/02/13
Submitted by: Vince Agamenone

PO Box 980
Virginia City, NV 89440
(775) 847-9311
Fax: (775) 847-9335
humanservices@sbcglobal.net
www.humanservicesnetwork.org

To: Assembly Taxation Committee
Date: May 1, 2013
Re: Support for SJR 15

Hearing Date/Time: May 2, 2013, 1 pm

Dear Chairwoman Bustamante Adams and Members of the Assembly Taxation Committee:

I write to offer support for Senate Joint Resolution 15 on behalf of the Human Services Network, a broad dynamic collaborative of over 50 Nevada health and human services providers who understand that the ability of Nevada to adequately fund important services for its residents depends on the passage of this bill.

As you know, SJR15 will remove the mining industry's special tax protections from our state's constitution. It is important to know that the Legislative Counsel Bureau has determined that passing SJR15 will not raise or lower taxes paid by the mining industry. What SJR15 does is give you and your fellow members of the Legislature the ability to determine the mining industry's tax rate. Or, as Senator Brower said, "This is about taking tax policy out of the constitution and into the hands of the legislature where it belongs."

The people of Nevada deserve to have the opportunity to vote on this very important issue. Please respect their right to do so by voting "yes" on Senate Joint Resolution 15.

Sincerely,

Erik Schoen
Executive Director

Assembly Committee: Taxation
Exhibit: P Page 1 of 1 Date: 05/02/13
Submitted by: Human Services Network

May 1, 2013

Nevada State Legislature – 2013 77th Session
Assembly Committee on Taxation
Chairwoman Irene Bustamante Adams
401 South Carson ST.
Carson City, NV 89701-4747

Chairwoman Bustamante Adams and Assembly Committee on Taxation Members:

Thank you for the privilege to speak before you today. I regret that I am unable to deliver my comments in person, which in no way minimizes the importance of this issue.

My name is Matt McCarty and I come before you today as a lifelong Nevada citizen, resident of Spring Creek, Nevada, member of a mining-dependent household, General Manager of the TownePlace Suites by Marriott, Chairman of the Elko Area Chamber of Commerce Government Affairs Committee, also Chairman of the Great Basin College President's Advisory Board and Member of the Elko Convention and Visitor's Authority Board, in opposition to Senate Joint Resolution 15* (SJR15*).

As part of the body that is tasked with balancing our State Budget, you know all too well the difficulties in weighing revenues against expenditures. I do not envy your position. However, I do ask that you evaluate all options when considering how best to provide for our state. In my opinion, SJR15* is a bad option for Nevada, particularly rural Nevada.

In the past, Nevada has relied heavily on the gaming, hospitality and tourism industries, as well as the revenues that go along with them. All Nevadans enjoy a relatively low tax environment as such. However, as we have seen, dependence on these industries has left the state hurting collectively when we are in periods of national recession, which we have just experienced. On that basis alone, targeting the mining industry should be avoided. One industry cannot solve our problems, or even be trusted in to fill gaps that have been created.

Having lived in northeastern Nevada my entire life, I have had the advantage of seeing the benefits of the mining industry. My brother and I used to come home from school and count the number of new homes coming into the area as a result of growing mining operations. This experience is shared by citizens in nearly every community across northeastern Nevada. I have also seen, and experienced, the negative effects when mining is not growing and cut-backs are required. I am concerned that SJR15* will preface another period of cut-backs.

Many families across northeastern Nevada depend on jobs and benefits from the mining industry. My wife is directly employed by one of the local mining companies. My family depends on the income and benefits that are provided to my wife by her employer. We are blessed to live in Elko County and enjoy living in this area of the state. The amenities afforded by our economy are mainly due to the mining industry. The hospitals our children are born in, the parks they play at, the public schools & the colleges they attend and the social & human services throughout Nevada all owe a degree of their current status to the mining industry.

Additionally, like many of our family and friends, my income is also dependent upon the income that mining support businesses generate. The hotel where I work was built 2 years ago because our ownership group decided to invest $10 million dollars in Elko. This investment would not have happened if not for mining. Our hotel depends on the employees of the mining industry. Towne Place Suites by Marriott employs 24 people that would be out of a job if we have to close due to the mining cut backs. I do not know of any of our fellow 32 hotel partners in the Elko area that would be unaffected by another downturn in mining. These hotels are only some of the thousands of businesses, which employ tens of

thousands, that benefit from mining. The impact of the loss of any of these businesses only exacerbates the problems within our economy caused by the loss of mining.

Another benchmark for growth is our Elko Area Chamber of Commerce with more than 750 business members. Each of them is, at a minimum, indirectly impacted by the cyclical nature of mining. The economies of northeastern Nevada depend on a healthy mining industry. Unlike many of our fellow businesses throughout the State, our local members have been able to keep their doors open because we are fortunate to be blessed with one of the few growth industries Nevada has seen in the past few years. Businesses know that a diversified income stream is required to weather the ups and downs that are natural to all economies. Counting on limited sources just doesn't make business sense. I believe that is why there is not a single Chamber of Commerce in this State, representing more than 18,000 Businesses, which supports this Bill.

Furthermore, Great Basin College has developed a terrific working relationship with the mining companies in rural Nevada, covering 6 Counties and more than half of the land area of our state. The mining industry funds programs that otherwise may not be available. This assistance is much more than just financial. Mining employees are students, faculty members, sit on Advisory and Foundation Boards and show support through countless volunteer hours. Currently, GBC is struggling to determine how to survive a 30% funding loss as a result of the proposed Nevada System of Higher Education Funding Formula. Adding the impact resulting from a pull-back in mining operations would have repercussion on the main campus in Elko and off-site centers throughout the State. This could erase decades of growth for Great Basin College.

One final area I would like to touch on is the Elko Convention and Visitor's Authority (ECVA). The ECVA is looking to expand to meet the needs of locals and visitors alike. This would not be possible if not for the mining industry. Not only do the local mining companies rent facilities on a regular basis, ECVA's General Fund and Marketing Fund show growth through mining and mine support businesses. Mining brings people to the area who stay in our hotels and pay Room Tax. Ad valorem receipts are up because of people moving into the area as a result of the mines hiring. Visitors and local residents patronize stores, allowing for sales taxes that return to the state and add more employment, which continues to add to revenue sources. This is all in jeopardy if SJR15* passes.

In closing, Nevada cannot continue to look for a silver or golden bullet to fix our woes. A balanced approach must be taken. Targeting one industry is not only unfair, it will be inadequate. The minerals that provide for the pre-payment of taxes, one-third of new job creation in the state and the lifeblood of dozens of communities will not last forever. The prices will not always remain high, as indicated by the 15% loss in the price of gold over the past 6 months. And while the price of gold has risen 60% in the past five years, the stock prices of the largest mining companies have dropped more than 20% in that same time. Increasing their cost will reduce their investments in Nevada and result in lower revenues. This is a bad choice for Nevada. Please make the right choice by voting against SJR15*

Thank you for your time.

Respectfully,

Matt McCarty

RESOLUTION #2013-01
NEVADA REPUBLICAN CENTRAL COMMITTEE
APRIL 6 2013

WHEREAS, Senate Joint Resolution 15 (SJR15) has been introduced into the Nevada Legislature to change the Nevada Constitution in regards to taxes specific to the mining industry, in order to facilitate tax increases on this industry, ostensibly for education, and;

WHEREAS, mining is a essential industry older than the state itself, accounting for 14 percent of jobs added over the last 12 months, and 33 percent of jobs added since recovery from the Recession started, and;

WHEREAS, the record is clear that Nevada spending on education has increased in every legislative session for decades and that Governor Sandoval has already proposed over $400 million in new funding for education, and;

WHEREAS, the Nevada Republican Party Platform is clear in supporting a strong minerals industry necessary for the United States to remain free and independent and it opposes any laws, regulations, ordinances or other legally binding actions that diminish the ability of the mining industry to discover and/or access minerals and mine them.

RESOLVED, that the record is clear that Nevada education is well funded and that excessive taxes are destructive to our growing mining industry in Nevada. An industry that creates high paying jobs which provide secure futures for Nevada families, and;

BE IT FURTHER RESOLVED, that the Nevada Republican Party stands firmly behind Governor Sandoval, Senators Cegavske, Goicoechea, Gustavson and Settelmeyer and the entire Assembly Republican Caucus in opposition to this unnecessary, anti-business, mining tax proposal, and;

BE IT FURTHER RESOLVED, that the Secretary of the Nevada Republican Central Committee will ensure this Resolution is distributed to Governor Sandoval, all Nevada legislators, and the appropriate media.

CERTIFICATION

The within resolution was duly presented by Assemblymen Wheeler, Oscarson, Ellison, Fiore and Hansen to the Nevada Republican Central Committee on this 6th day of April, 2013.

Michael J. McDonald, Chairman
Nevada Republican Central Committee

Assembly Committee: Taxation
Exhibit: R Page 1 of 1 Date: 05/02/13
Submitted by: Nevada Republican Central Committee

From: **Lynne Volpi** <lvolpi@frontiernet.net>
Date: Fri, May 3, 2013 at 9:29 AM
Subject: Women's Mining Coalition opposes Senator Roberson's mining tax
To: Teresa.BenitezThompson@asm.state.nv.us, Irene.BustamanteAdams@asm.state.nv.us, Peggy.Pierce@asm.state.nv.us, Jason.Frierson@asm.state.nv.us, William.Horne@asm.state.nv.us, Marilyn.Kirkpatrick@asm.state.nv.us, Dina.Neal@asm.state.nv.us, Tom.Grady@asm.state.nv.us, Cresent.Hardy@asm.state.nv.us, Pat.Hickey@asm.state.nv.us, Randy.Kirner@asm.state.nv.us, Lynn.Stewart@asm.state.nv.us

Friday, May 03, 2013

Attn: Assembly Committee on Taxation
Assemblywoman Irene Bustamante Adams, Chairwoman
Peggy Pierce, Vice Chair
Teresa Benitez-Thompson
Jason Frierson
William C. Horne
Marilyn K. Kirkpatrick
Dina Neal
Tom Grady
Cresent Hardy
Pat Hickey
Randy Kirner
Lynn D. Stewart

Senator Roberson's mining tax is a penalty on rural communities and counties. Misdirected senators, mainly residing in Clarke Co. and led by Senator Roberson, have devised a penalizing plan, singling out mining—gold and silver only—proposing a jobs- and industry-killing tax. This is not a fair solution for the state.

WMC's mission is to deliver the message to our legislators that a strong mining industry is vitally important to our nation, our communities, our families, and our livelihoods, and that today's regulations and modern technology ensure responsible stewardship of our lands. This proposed tax will hurt the mining industry in Nevada and the 2.300 mine-related vendor companies.

WMC members have had the pleasure of working in Nevada communities statewide and have seen the contributions that mines and mine development have provided—STATEWIDE. Mining has been contributing not only to the largely rural communities in which it is generally located, but also to the state coffers, supporting statewide needs.

Exploration is the research and development arm of the mining industry, and Nevada's share of world-wide exploration dollars has been decreasing due to difficult and uncertain permitting processes. As a result, investment dollars in exploration have been on the decline, with mine development dollars being spent elsewhere, including Canada, Mexico, South America, and

Africa. Investments in Nevada-based exploration and development efforts are sitting on the sidelines now, awaiting the results of this proposed increased tax on the mining industry. If this tax is approved, these dollars will leave Nevada, seriously curtailing new mine development and eliminating the pipeline of new mine projects for development. Current mines will slowly decrease production, and investment in exploration will be deemed more effective in other jurisdictions such as Canada, Mexico, South America, and Africa. WMC members are already seeing the negative effects of this proposed tax, with exploration and mine development dollars leaving the state. The end result: net proceeds, property,and sales and use taxes will all decrease, and this taxation effort will have chased off a valued diversified industry with its associated 2,300 support and services companies.

The WMC asks all members of the Legislature to please find a more balanced solution, one that does not single out one industry; get everyone engaged in the tax discussions and find a more balanced solution, engaging every industry in the discussions. Taxing is not the answer; certainly taxing one industry is not the solution this state needs.

WMC & our Nevada members ask you to NOT support this industry killing tax increase and proposal.

Kind regards,
Lynne Volpi
Women's Mining Coalition Coordinator
Elko, Nevada

Wanda Burget, WMC President, Norwest Corp.
Nicole Preuss, WMC Vice President, Kinross Gold Corp.
Cami Prenn, WMC Treasurer, Mine Development Associates
Alexandrea Palensky, WMC Secretary, Peabody Energy

Wells Family Resource & Cultural Center

261 First Street * P.O. Box 773 * Wells, NV 89835
Telephone: (775) 752-2345 * Fax: (775) 752-3079
Email: wellsfamilyresourcecenter@gmail.com

May 1, 2013

Senator Pete Goicoechea
Pete.Goicoechea@sen.state.nv.us

Assemblyman John Ellison
John.Ellison@asm.state.nv.us

Gentlemen:

The Wells Family Resource Center (WFRC) is a small non-profit 501C3 early childcare education and daycare facility serving the community of Wells and surrounding rural areas. 45% of our clients are low income. We operate on a very tight budget, with approximately 49% of our revenue coming from local fundraisers, donations and grants.

The WFRC Board of Directors is concerned that SJR15, as written, will inadvertently have a negative effect on our facility. The mining industry has made very generous financial and in-kind contributions to our facility and the communities we serve. We are concerned that a change in the way mines are taxed will negatively affect their ability to continue to provide this support.

Thank you for your service to the citizens of Elko County and our children.

Sincerely,

Tommi Reynolds, Secretary

on behalf of the
Board of Directors, WFRC

Assembly Committee: Taxation
Exhibit: T Page 1 of 1 Date: 05/02/13
Submitted by: Wells Family Resource & Cultural Center

Assemblywoman Bustamante Evans and members of the committee. My name is Richard Tellier. I am a former Army Officer, a West Point graduate, have worked as a city manager, owned my own business in New Mexico which has a gross receipts tax, and am currently a teacher in Clark County School District. I am testifying today about SJR 15, which removes the Constitution protection for mining.

Many states recognized the non-renewable and finite supply of mineral resources located within their borders. For example, Alaska charges a royalty of 25% on oil. There are many examples of states which didn't do that, and are now suffering as the mineral were removed and the mining moved on.

Nevada is in a unique position in that we have many valuable mineral resources that need to be used as revenue sources to provide needed services to the citizens of Nevada. These services include education, social welfare and health services, road construction, and a myriad of other needs.

Many will claim that mining is taxed fairly and if the rules are changed will leave the state. Let's look at the facts.

Barrick Mining is headquartered in Toronto Canada and is one of the largest mining companies in the world. The company has divided it's gold mining operations into three major regions. They call these North America, South America, and Australia Pacific. This is a link to official Barrick documents reflecting the impact of these areas.

http://www.barrick.com/operations/default.aspx

According to Barrick documents, the North America Region produced 47% of Barrick's worldwide production. The amount of gold produced was 3,493,000 ounces or 109.15625 TONS of gold. The spot price of gold on March 26 was $1600.80. The projected reserves in North America are 59.5 MILLION ounces or 42% of the company's total known reserves. In 2012, Barrick had 9 active mines.

One mine is scheduled to come online in January 2013 and active exploration ongoing in one site in Nevada. The Goldrush Project is located 3 miles from another Barrick mine, Cortez Hills, and has projected reserves of 8.4 MILLION ounces, with another 5.7 MILLION ounces likely.

The Golden Sunlight Mine is located in Montana. In 2012, the mine produced 98,000 ounces of gold at a production cost of $708 per ounce. The known reserves for this mine are 318,000 ounces.

The Helmo mine, located in Ontario, produced 206,000 ounces of gold at a cost of $978 per ounce in 2012. The estimated reserves are approximately 1.2 Million ounces.

The two mines located outside of Nevada produced a total of 304,000 ounces or 8.7% of the total Barrick gold production for North America.

The first mine owned by Barrick is Bald Mountain. This mine produced 161,000 ounces of gold at a cost of $834 per ounce in 2012. The known reserves total 5.2 Million ounces.

The next mine is Cortez Hills which produced 1,370,000 ounces of gold at a cost of $282 per ounce. According to the Barrick documents, Cortez Hills is "one of the largest and lowest cost mines in the world". The known reserves for Cortez Hills total 5.1 Million ounces.

The Goldstrike Mine is also owned by Barrick. This mine produced 1.17 Million ounces of gold in 2012. The cost of production was $541 per ounces and the know reserves are estimated at 12.3 Million ounces.

The smallest Barrick mine in Nevada is Ruby Hill which is located just outside Eureka. The 2012 production totaled 41,000 ounces at a cost of $682 per ounce. The known reserves are estimated at 326,000 ounces

Barrick is involved in a joint venture with an ownership share of 33% of the Marigold Mine. In 2012, Barrick's share of production was 48,000 ounces at a cost of $821 per ounce. The known reserves are 1.6 million ounces.

The second joint venture that Barrick is involved in is the Round Mountain Mine with 50% ownership. The cost of production as $711 per ounce, with 185,000 ounces produced in 2012. The estimated reserves are 1.2 million ounces.

The last joint venture that Barrick is involved in during 2012 was the Turquoise Ridge mine. Barrick owns 75% of that mine. In 2012, the mine produced 144,000 ounces of gold at a cost of $545 per ounce. The mine has 5.8 million ounces in know reserves.

The Nevada Department of Taxation has estimated that Barrick will have Net Proceeds after expenses of approximately 2 Billion. The taxes to be paid will be about 101.4 Million.

The Barrick joint venture in the Dominican Republic began production in January 2013. For the year, Barrick estimates that the 60% share will produce between 625,000 to 675,000 ounces of gold at a cost of between $ 650-750 per ounce. The estimated reserves in Pueblo Viejo are 15 Million ounces. The contract with the Dominican Republic has Barrick paying approximately 11 BILLION over the life of the contract. In order for Nevada to collect the same amount of money, assuming the same payment of just over 101 Million, it would take over 100 years.

If the tax structure of Nevada is changed, will Barrick mining leave the state which produces the majority of the revenue generated by the company? I don't think so.

Dear Taxation Committee,

I support SJR 15.

As you've heard from the LCB, current tax revenue will not instantly change. Still a lot of the fears are being put out by the mining industry--so many and going in so many directions that you have to wonder if any of them have any merit. They are even concerned that mining tax revenue might decease. I appreciate their concern for the state and their mountains of frightening detail. Give them the floor and enough time and you will get a course on how mining works. It is tempting to get nervous and then get buried while attempting to predict the future.

Lets cut to the bottom line. They sky will not fall. Simply put, with this change the Nevada Legislature will have the option to increase some taxes on mining in the future. Its only an option.

While mining was categorically special in 1864 it is not categorically special today. The place for mining to present their needs is at the table before the Nevada Legislature along with other industries.

Will this change create a degree of uncertainty? Of course it does. A little. At least temporarily. Just because people will always worry if they can. However, exaggerating those fears is not appropriate or accurate. Any problems that arise from this change will be solved where they should be solved--in the Legislature. If mining is already paying its fair share then mining has nothing to worry about. I encourage you to reject their catalog of fears.

Pass SJR 15. Make this change and then do the ensuing Legislative work on behalf of Nevada as a whole.

Thank you for your time!

Chris Bayer
605 Poplar St.
Carson City
Nevada
291-7014

OPPOSITION EMAIL STATEMENTS RECEIVED RE: SJR 15*

On Wed, May 1, 2013 at 4:22 PM, Webmail mgrover <mgrover@mstar.net> wrote:
Hello, We will be unable to attend the hearing broadcast to GBC due to work constraints but do wish you to know we oppose the bill SJR15* due to the threat it poses to the retention of mining interests in Nevada. There are far more places worldwide to mine and if this state does not attract the companies, they simply will go elsewhere. Too much is yet unknown such as the fiscal impact to Elko County, assessment locations, and what will be the actual change in amount collected? We oppose a change so drastic that is not well investigated and actually needs no constitutional change to implement.
Merleen and David Grover

``````````````````````````````````````````````````````

From: **R. Long** <blongnv@yahoo.com>
Date: Thu, May 2, 2013 at 10:04 AM
Subject: Vote NO on SJR15
To: "blongnv@yahoo.com" <blongnv@yahoo.com>
Before we implement another tax on anyone, let's make sure we aren't wasting the tax dollars we're already receiving. Let's also make sure that we are fostering an environment in Nevada to create well-paying jobs. The more people employed, the greater the revenues. Over-taxing existing industries drives business away. A co-worker's husband, who works in the Nevada mining industry, has recently lost his job due to excessive government regulation of the mining industry. Companies are happy to move to South America where the climate is far more friendly. Think about the long-term implications.
Thank you,
Roberta Long

``````````````````````````````````````````````````````

From: **Janine** <director@nevadafamilies.org>
Date: Thu, May 2, 2013 at 8:38 AM
Subject: Please vote No on SJR15* protect jobs
To: Irene.BustamanteAdams@asm.state.nv.us

Dear Assemblyman Bustamante-Adams,

Please vote against SJR15*. Mining creates good jobs. Why would we penalize an industry that is paying good wages, contributes significant charitable money to local communities, and already pays significant state and local taxes? Mining can shift significant operations out of our state to other locations harming our economy.

Education doesn't need more money but needs real reform like Florida with choice in education. Nothing will ever improve in education as long as the SNEA Teachers Union controls our failed education policy.

Don't harm our states economy and take jobs from rural communities by increasing the tax burden on mining, Mining supports families.

Janine Hansen
State President Nevada Families for Freedom

``````````````````````````````````````````````````

From: **Gravell, Susan** <Susan.Gravell@csn.edu>
Date: Thu, May 2, 2013 at 8:44 AM
Subject: No
To: "Irene.BustamanteAdams@asm.state.nv.us" <Irene.BustamanteAdams@asm.state.nv.us>
Vote No on SJR15 the Constitutional Amendment on the Mining Tax. We don't have a revenue problem we have a spending problem. Education needs reform not more money wasted on failed programs promoted by the Teachers Union. Groups like the Progressive Leadership Alliance, the champions SJR15, just want to build Big government and add to the numbers of tax users at the expense of tax producers in Nevada. Mining creates jobs. Why are we punishing successful businesses in this economy when we need more jobs not more people on the government dole?
Thank You,
Ms. Susan Gravell

``````````````````````````````````````````````````

From: **Carol Collins** <carolcollins@me.com>
Date: Thu, May 2, 2013 at 8:18 AM
Subject: SJR15
To: Irene.BustamanteAdams@asm.state.nv.us, Peggy.Pierce@asm.state.nv.us, Teresa.BenitezThompson@asm.state.nv.us, Jason.Frierson@asm.state.nv.us, William.Horne@asm.state.nv.us, Marilyn.Kirkpatrick@asm.state.nv.us, Dina.Neal@asm.state.nv.us, Tom.Grady@asm.state.nv.us, Cresent.Hardy@asm.state.nv.us, Pat.Hickey@asm.state.nv.us, Randy.Kirner@asm.state.nv.us, Lynn.Stewart@asm.state.nv.us
Oppose SJR15 - vote No
thank you
carol collins

``````````````````````````````````````````````````

On Wed, May 1, 2013 at 6:17 PM, Janice Muzzy <lmuzzy@pyramid.net> wrote:
Good afternoon,
I'm writing to express my opposition to SJR15. We can't improve the economic climate in Nevada by burdening a business in the name of fairness. This tax will reduce investment by mining in employment, capital expenditures, supplies, and spending in the local economy.
Thank you,
Lynn Muzzy
2924 La Cresta Circle
Minden 89423
775-267-6744

``````````````````````````````````````````````````

From: **Clint & Sasha Altman** <altmancrew@yahoo.com>
Date: Thu, May 2, 2013 at 6:40 AM
Subject: SJR15: Oppose the Mining Tax
To: "Irene.BustamanteAdams@asm.state.nv.us" <Irene.BustamanteAdams@asm.state.nv.us>, "Peggy.Pierce@asm.state.nv.us" <Peggy.Pierce@asm.state.nv.us>, "Teresa.BenitezThompson@asm.state.nv.us" <Teresa.BenitezThompson@asm.state.nv.us>, "Jason.Frierson@asm.state.nv.us" <Jason.Frierson@asm.state.nv.us>,

"William.Horne@asm.state.nv.us" <William.Horne@asm.state.nv.us>, "Marilyn.Kirkpatrick@asm.state.nv.us" <Marilyn.Kirkpatrick@asm.state.nv.us>, "Dina.Neal@asm.state.nv.us" <Dina.Neal@asm.state.nv.us>, "Tom.Grady@asm.state.nv.us" <Tom.Grady@asm.state.nv.us>, "Cresent.Hardy@asm.state.nv.us" <Cresent.Hardy@asm.state.nv.us>, "Pat.Hickey@asm.state.nv.us" <Pat.Hickey@asm.state.nv.us>, "Randy.Kirner@asm.state.nv.us" <Randy.Kirner@asm.state.nv.us>, "Lynn.Stewart@asm.state.nv.us" <Lynn.Stewart@asm.state.nv.us>

Dear Assemblyman,
Vote No on SJR15 the Constitutional Amendment on the Mining Tax. We don't have a revenue problem we have a spending problem. Education needs reform not more money wasted on failed programs. Mining creates jobs. Why are we punishing successful businesses in this economy when we need more jobs not more people on the government dole?
Sincerely,
Clint & Sasha Altman
Winnemucca, NV

`````````````````````````````````````````````````````````

**From:** Ken Greenwell
**Sent:** Thursday, May 02, 2013 7:07 AM
**To:** Irene.BustamanteAdams@asm.state.nv.us ; Peggy.Pierce@asm.state.nv.us ; Teresa.BenitezThompson@asm.state.nv.us ; Jason.Frierson@asm.state.nv.us ; William.Horne@asm.state.nv.us ; Marilyn.Kirkpatrick@asm.state.nv.us ; Dina.Neal@asm.state.nv.us ; Tom.Grady@asm.state.nv.us ; Cresent.Hardy@asm.state.nv.us ; Pat.Hickey@asm.state.nv.us ; Randy.Kirner@asm.state.nv.us ; Lynn.Stewart@asm.state.nv.us

# Why do you people insist on spending above your means???? The more taxes you impose on any type of business in the state is more money taken out of our economy. With employment in Nevada well above 16% more taxes will equate to more unemployment. Government does not create jobs or wealth, this comes from the private sector. Please vote NO on SJR15.

**Vote No on SJR15 the Constitutional Amendment on the Mining Tax.** We don't have a revenue problem we have a spending problem. Education needs reform not more money wasted on failed programs promoted by the Teachers Union. Groups like the Progressive Leadership Alliance, the champions SJR15, just want to build Big government and add to the numbers of tax users at the expense of tax producers in Nevada. Mining creates jobs. Why are we punishing successful businesses in this economy when we need more jobs not more people on the government dole?
`````````````````````````````````````````````````````````

``````````````````````````````````````````````````

From: **Dolores Bennett** <dolores_bennett@sbcglobal.net>
Date: Thu, May 2, 2013 at 7:18 AM
Subject: No on SJR15
To: Irene.BustamanteAdams@asm.state.nv.us, Peggy.Pierce@asm.state.nv.us, Teresa.BenitezThompson@asm.state.nv.us, Jason.Frierson@asm.state.nv.us, William.Horne@asm.state.nv.us, Marilyn.Kirkpatrick@asm.state.nv.us, Dina.Neal@asm.state.nv.us, Tom.Grady@asm.state.nv.us, Cresent.Hardy@asm.state.nv.us, Pat.Hickey@asm.state.nv.us, Randy.Kirner@asm.state.nv.us, Lynn.Stewart@asm.state.nv.us

Re SJR15: *Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)*

Please vote **NO** on SJR15. Instead of constantly working on new ideas to raise more tax dollars, Nevada needs to make better decisions managing the tax dollars that we currently generate.

Thank you,
Joe F. Bennett
Dolores E. Bennett
1504 Odette Lane
Las Vegas, NV 89117

``````````````````````````````````````````````````

From: **Jill Nicholson** <jill7@cox.net>
Date: Thu, May 2, 2013 at 6:30 PM
Subject: SJR 15
To: Irene.BustamanteAdams@asm.state.nv.us, Peggy.Pierce@asm.state.nv.us, Teresa.BenitezThompson@asm.state.nv.us, Jason.Frierson@asm.state.nv.us, William.Horne@asm.state.nv.us, Marilyn.Kirkpatrick@asm.state.nv.us, Dina.Neal@asm.state.nv.us, Tom.Grady@asm.state.nv.us, Cresent.Hardy@asm.state.nv.us, Pat.Hickey@asm.state.nv.us, Randy.Kirner@asm.state.nv.us, Lynn.Stewart@asm.state.nv.us

Please VOTE NO ON SJR 15
Why do we keep penalizing businesses and trying to increase taxes on anything the moves, all to help fund bigger government and its coffers. If you didn't keep expanding government, then you wouldn't need to keep trying to milk we the people to fund your politics. SO, I URGE YOU TO TIGHTEN YOUR OWN BELTS AND START BEING RESPONSIBLE AND ACTUALLY TRY TO DECREASE YOUR OWN GOVERNMENTAL COSTS INSTEAD OF STICKING IT TO US!

Marcia Nicholson

``````````````````````````````````````````````````
``````````````````````````````````````````````````

From: **jeanne gregory** <mustang4@775.net>
Date: Thu, May 2, 2013 at 6:39 PM
Subject: SJR15 OPPOSE, PLEASE
To: Irene.BustamanteAdams@asm.state.nv.us, Peggy.Pierce@asm.state.nv.us, Teresa.BenitezThompson@asm.state.nv.us, Jason.Frierson@asm.state.nvus, William.Horne@asm.state.nv.us, Marilyn.Kirkpatrick@asm.state.nv.us, Dina.Neal@asm.state.nv.us, Tom.Grady@asm.state.nv.us, Cresent.Hardy@asm.state.nv.us, Pat.Hickey@asm.state.nv.us, Randy.Kirner@asm.state.nv.us, Lynn.Stewart@asm.state.nv.us

SJR15: Oppose the Mining Tax

Jeanne and Don Gregory
5680 Briarhills Circle Reno Nv 89502

EMAIL TESTIMONY IN OPPOSITION TO SJR 15

From: Lee Hoffman [mailto:daddyho51@frontiernet.net]
Sent: Friday, May 03, 2013 1:36 PM
To: Assembly Taxation Exhibits
Cc: Ellison, John Assemblyman; Goicoechea, Pete Senator; 'Aaron Fisher'; 'Aaron Fisher'; 'Bill Gagnon'; 'Bill Gagnon'; 'Bill Nisbet'; 'Chantry Harris'; 'Elwood Mose'; 'Greg Barker'; 'Jerry Cooney'; 'John Norton'; 'Lee Hoffman'; 'Lee Hoffman'; 'Lynne'; 'Marla Criss'; Merlene Grover; 'Mike Franzoia'; 'Mike Stirm'; 'Monique Heieie'; 'Neil McQueary'; 'Pedro Marin'; 'Pedro Marin'; 'TJ Robison'; 'TJ Robison (Nevada SBC)'; Todd Valline; 'Trini Bassett'; 'Trini Bassett'
Subject: SJR15*

From:
Lee E. Hoffman
1085 Barrington Avenue
Elko, Nevada 89801
775-738-3920

To:
Nevada State Assembly Taxation Committee
Regarding SJR15*

Greetings and thank you for the opportunity to comment on SJR15*,

I was in Elko during yesterday's hearing but did not have the chance to speak at that time. I understand the time constraints you were under, and I hope you will still consider this testimony before making your decision.

I am a Nevada native, a graduate of the University of Nevada, Mackay School of Mines, and have lived in Elko for the last 31 years. I served for 16 years on the Elko City Council and am currently the Chair of the Elko County Republican Party, but this statement is my own and is not intended to represent the view of the party.

I plan to retire soon, in Elko, after a 39 year career in the mining industry. So my concern is not about whether this legislation will affect my job, it is about my community and whether this is sound public policy.

First of all, I disagree with the characterization of SJR15* as "removing constitutional protection" for the mining industry. Instead, the State Constitution currently imposes a tax on the Mining Industry that no other industry pays, while mining still pays the other taxes that are common to all businesses. I understand that the Constitution does cap the tax rate, but it is for a tax that no one else pays, and it remains disingenuous to discuss it in terms of "mining's preferential treatment".

From a public policy standpoint, I assert that repealing the current Net Proceeds of Minerals Tax is a bad step. I ask you to recognize that the industry does pay a fair share; I ask you to consider the unintended consequences of this legislation; and I ask you to realize that it is not a sustainable solution to Nevada's budget issues.

Mining does pay its fair share. Mining pays, including the Net Proceeds of Minerals Tax, almost $25,000 in state and local taxes per employee per year compared to the next three industries of Manufacturing at $9,500, Leisure and Hospitality at $7,800 and Construction at $7,000.

There will be unintended consequences from the repeal and replacement of the Net Proceeds of Minerals Tax. The intent is clearly not to lower the taxes paid by mining, but this is a likely outcome. Just as I do not understand the gaming industry, I know that the general populace does not understand mining. The assumption seems to be that we walk around, pick up gold nuggets and sell them for the spot price, so some conclude that raising the tax rate would raise tax revenues proportionally. That is not remotely close

to reality. Having been in mining for nearly four decades, I can attest the fact that "all ores are NOT created equal". In an effort to extend production and be long term contributors to Nevada's economy, mining companies have extended their reserves and mine plans by including lower grade ores that cost more to extract. With the increased tax burden, the marginally profitable ores will drop out of production plans; reserves and production will decrease; hiring and investment will decline. The uncertainty created by removing the Constitutional language will dampen the industry's appetite to explore and invest in long term projects. This is especially true when combined with all of the other uncertainty involved (metal price volatility; regulatory changes; possible listing of the sage hen; exploration uncertainty). Despite some of the rhetoric, there are other gold deposits in the world and until now, Nevada has had a competitive edge in attracting mining industry capital because of the relative stability of the tax burden. Large mining companies will give more consideration to projects in other parts of the world. The likely result is an overall DECLINE of tax revenues.

This approach is not sustainable. Balancing Nevada's budget and funding education by adding a large additional tax burden to a single industry simply will not work. The minerals are non-renewable resources. As discoveries become fewer, minerals are depleted and costs increase, production will taper off. Adding additional tax burden only hastens that process. A budget built relying on an increased tax rate to the mining industry, given the production uncertainty and volatile metal prices, will leave the State hopping from one funding crisis to the next looking for other revenue sources. The State cannot build a realistic plan for the future and fund ever increasing demands on services based on one volatile sector of the economy.

I urge you to oppose SJR15* because it is bad public policy, because mining does pay its fair share, because the expected boon to State coffers will not materialize and because it is not a sustainable approach to the State's budget problems.

Thank you.
Respectfully submitted,
Lee E. Hoffman

`````````````````````````````````````````````````````

**From:** Kimberly Rossiter [mailto:krossiter@lumosengineering.com]
**Sent:** Friday, May 03, 2013 3:49 PM
**To:** Assembly Taxation Exhibits
**Subject:** Opposed to SJR15

Dear Taxation Committee,

I am writing to let you know that I am adamantly against SJR15 which proposes to amend the Nevada Constitution by removing mining-specific language added in 1989. Obviously, SJR15 is in many ways flawed since trailer bills have been added on to address these flaws if SJR15 is passed. Why are you still considering a bill that has as many flaws and uncertainties as this one will create?

SJR15 will drive Nevada back into a recession because the mines will be halting exploration and in some cases closing their doors. How is going to help the rural communities that depend on mining?

I believe you were all elected to office to do what's best for all Nevadans and all of Nevada. I do not believe that the committee has done its job to investigate and determine a BALANCED & FAIR approach to raise the needed revenue to fund education.

Kimberly Rossiter
Reno, Nevada
`````````````````````````````````````````````````````

From: hemphie@aol.com [mailto:hemphie@aol.com]
Sent: Friday, May 03, 2013 4:51 PM
To: Assembly Taxation Exhibits
Subject: sjr15

madam chairwoman
i will call this testimony a day in the life of a used oil collector OPPOSSED TO SJR 15

i am going to carlin to pick-up the mines used oil generated from ALL equipment that has to be serviced and all lubricants drained this is a monthly service asbury environmental services(my employer) provides to the mine.

make sure i have full tank of fuel,it will take one and one quarter tank to do a round trip from gardnerville to carlin, cost approixmately $400.00.
during my trip i usually stop in winnemucca or battle mountain to eat breakfast or lunch at a LOCAL establishment, cost $5.00-$6.00 w/at least a $2.50 tip
arrive in elko approximately 5.5 hrs from beginning of trip(no real accomadations in carlin). register in hotel usually shilo inn and get some dinner and after have an adult beverage(1) and retire for the evening,tipping both the server at the restaurant and the bar keeper cost approx. $20.00.
wake-up get some breakfast and go to carlin to pick- up customer cost $6.00.
start trip back home next and stop for lunch most of the time in lovelock cost $6.00. oops forgot the hotel $78.00 return home in the evening.

my point is because i service the mines on a monthly basis this trip happens 12 times a year at a cost of $523.50 per trip =$6,282.00 per year paying
various business' income so they can support their families and spend their income in the communities they reside in.
to my knowledge the NEVADA MINING ASSOCIATION has 600 members all contributing to the communities they sleep,eat and entertain while doing business directly related to and because of the mining industry in Nevada:not only does the mining industry level the playing field they lift up all communities and schools in Nevada if a change in the Constitution would occur these communities and schools would suffer.

Respectfully Submitted
David W. King
1461 Orchard Rd.
Gardnerville,NV. 89410
p.s. the mines receive compensation for the used oil generated
which is approx.3,000,000-4,000,000 and pays taxes on that income
recycling oil it's a beautiful thing!

EMAIL RECEIVED IN SUPPORT OF SJR 15

From: Karon Jury-Ferjanec [mailto:Karon.Jury-Ferjanec@goldcorp.com]
Sent: Friday, May 03, 2013 11:17 AM
To: Assembly Taxation Exhibits
Subject: Nevada Mining Association

I am in support of what the Nevada Mining Association is trying to do there in Carson City, such great people, I work at mines in Nevada and have for over 30+ years, both underground and open pit. We really donate a lot to the community, schools, and participate in almost all functions. Our mine is situated between Winnemucca and Battle Mountain, so we donate to both cities. I truly believe the communities depend on our donations for quite a lot of functions that they sustain and put on. The Bill SJR15, once you start changing the wording of something then comes the reasoning, then an explanation as to what it means, it seems like it just, snowballs, into something it should have never been. I do believe in change but I still hold on to the old saying if it isn't broke and it is working fine, leave it alone. I really am not in tune with the money aspect of what and how the mining industry is being taxed but I do know that the government gets quite a bit from each operating mines, and from each person individually from the money we make at the mine. We provide the communities with jobs and at all levels, we promote education and have our own internal education programs, besides donating for scholarships to the individual schools in the area. The government starts asking for more, then it is going to come out of our pockets, because the mines will pull back the funding that they do, their budgets will be smaller, the employee numbers will dwindle and then the small town will become ghost towns. You can only squeeze so much juice out of a turnip, and I believe you have squeezed all you can from the mining industry.

karon Jury-Ferjanec
Marigold Mining Company
Phone: 775-635-2317 ext. 610
Fax: 775-635-2551
Email: karon.jury-ferjanec@goldcorp.com

Dan Rockwell
Statement before the Assembly Committee on Taxation
May 2, 2013

Thank you, Madame Chair and members of the committee – my name is Dan Rockwell, and I am the Reno Division Manager for Soil-Tech. Soil-Tech is a Nevada company founded in Las Vegas 23 years and expanded to Reno 10 years ago. We provide environmental services such as: revegitating the landscape, habitat restoration, weed management, dust control, and stabilizing the soil. We do this work for developers, public agencies on highway construction projects, and even for mines. Most of you may be familiar with the work we've done along the new 580 highway from Reno to Carson.

Our company has grown significantly over the last few years. We have approximately 80 employees and we're still growing.

There are 2,300 vendors to the mining industry in this state. Our health is tied to theirs. That is why there are vendors in this room, and in the room in Elko. Reno alone has more than 600. Madame Chair, in your district 42 there are eleven.

As the incoming chair of the Nevada Mining Association vendor committee, I am here to tell the story of all of these vendors.

When mining companies look at the uncertainty the passage of this bill has unleashed, and decide not to start on that next expansion, or not to locate here at all, that hurts my business. Every exploration project that does not pan out means fewer business opportunities for Soil Tech and companies like ours.

I'm not a political guy. But I have been in business for years and business thrives on stability; it grows on certainty. I know there were many businesses that, if mining were not here to help through the tough times, would have fallen by the wayside. Today the economy is starting to regain its strength and businesses are growing again, we can't afford to introduce new elements of uncertainty and hurt this recovery.

Senate Joint Resolution 15 is just that – an element of uncertainty. I am here today to ask that you reject this measure. More than half of the 25,000 mining jobs in Nevada are along the supply chain at companies like mine. Please help protect my company and protect these jobs.

Assembly Committee: Taxation
Exhibit: Z Page 1 of 1 Date: 05/02/13
Submitted by: Dan Rockwell

Lander County Economic Development Authority
315 S. Humboldt St.
Battle Mountain, NV 89820
Phone: (775) 635-2860

May 2, 2013

Nevada State Legislature
Assembly Taxation Committee
Chairperson Irene Bustamante Adams
401 South Carson ST.
Carson City, NV 89701-4747

Dear Assembly Taxation Committee members,

The Lander County Economic Development Authority (LEDA) represents Lander County and the communities of Battle Mountain, Austin and Kingston as an advisory board to the County Commission. We are very concerned at the Senate's recent actions to support SJR15 and SB400 and write to ask that you NOT support these bills.

This legislation has the potential to cripple the only industry that is thriving right now. Mining has added thousands of jobs over the past few years and can continue with that level of growth if we don't take away their means to do so.

The legislation can also derail the efforts made in Lander County to create community capacity, improve quality of life and build the necessary infrastructure for a sustainable community; to move beyond the boom-bust cycle.

Lander County has parlayed the recent influx of mineral tax revenues to improve and expand water and sewer facilities, address water quality issues, as well as flood containment and control. New county administration and judicial facilities and a community center with a future Boys and Girls Club are also tied to a healthy mining sector. These funds have also been supporting our schools, hospitals and in LEDA's case, the search for future job centers that can sustain the local economy beyond the mining sector.

The combination of these community economic development tactics create what the Governor's Office of Economic Development considers a critical foundation for workforce development...and we know how important that is to our state as together we try to recover from recession.

The current formula for the Net Proceeds of Minerals Tax (NPOMT) has created the reliable source of revenue to both State and local governments; revenues Lander County depends on to move forward as a healthy and vibrant community now and into the future.

We urge you to look at the entire picture when addressing these pieces of legislation which could have unintended, and possibly catastrophic impacts to your citizens who reside outside the state's two urban centers.

Jon Sherve, Chairman LEDA

Shar Peterson, Vice Chairman
Newmont Mining Co.

Sandy Ayers
Small Business Owner

Dee Helming
Small Business Owner

George Fennemore
Barrick Mining Corp.

Sarah Edgar
Barrick Mining Corp.

Amy Nelson
Lander County School District

Paula Tomera
Battle Mountain Chamber of Commerce

Comments Submitted
to the Assembly Taxation Committee
Re: SJR 15

by
Naomi Duerr, Professional Geologist, President
Desert Pacific Exploration, Inc.
1680 Greenfield Drive
Reno, Nevada 89509
nsduerr@sbcglobal.net
775-825-8215 (w), 775-842-1035 (cell)

May 3, 2013

For the record, my name is Naomi Duerr and I am President of Desert Pacific Exploration, Inc., a small mineral exploration firm. Taxation Committee Chair Irene Bustamante Adams left the record open to receive additional testimony and comments on SJR 15 through today. Since I was not able to attend the hearing in person yesterday, I am providing my comments now.

About Us

My husband and I own a small mineral exploration company: Desert Pacific Exploration, Inc. We have been in business approximately 20 years exploring for minerals in Nevada and seven other western states. We also co-own two other small exploration ventures. We are both professional geologists and have worked as geologists for some 30-35 years. Our company, DPE, has about 250-300 mineral exploration claims at any one time, with more claims in our other companies. The number of claims varies year-to-year.

SJR 15

Our company is concerned about the potential impacts of removing mining and mining claims from the Constitution. We do understand that the state needs additional revenues and that mining needs to be part of the solution. While we would have vastly preferred a broad-based tax to address the state's wide ranging needs rather than an approach which relies largely on any one industry, we are not the ones making those

Assembly Committee: Taxation
Exhibit: BB Page 1 of 4 Date: 05/02/13
Submitted by: Desert Pacific Exploration

decisions. Thus, my goal in writing is to ensure that if you do pass SJR 15, you also pass a companion bill to address the potential negative consequences of the bill on the exploration industry – the folks who find the gold and silver that many would like to tax more. SB 400, currently in the Senate Finance Committee, is that companion bill. SB 400 as currently drafted would address a major issue by excluding unpatented mining claims from being assessed a real property tax.

Why Mining Claims should be Exempt from Real Property Tax

1. **Taxing R & D.** Exploration is the research and development arm of the mineral industry. We identify federal lands with potential mineral resources, stake claims on those lands in accordance with all state and federal requirements, develop geologic information about the claims, and travel throughout the world to get potential investors interested in investing in Nevada and using their capital to explore and potentially develop the claims.

   Unfortunately, finding an economically viable ore deposit is very difficult. An industry rule of thumb is that only one out of 1000 properties we explore will actually become a mine. Once the minerals are found, it typically takes the investment of many millions of dollars and another 10- 15 years to put the mine into production. Of importance, we receive little or no income from our mining claims during this time – a period of 20- 25 years.

   While we receive little income during the exploration phase and generally have no assets (mines), we do have expenses. We pay fees every year to hold the claims. We also incur expenses to explore the claims, attract investors to the state, and run our businesses. **Exploration is essentially a breakeven proposition** – assessing a real property tax would add one more barrier to success. Rather than encourage new economic opportunities to take hold in the state, we would be driving them away.

2. **No Exclusive Use -** Even though mineral claims are assigned for one year to one person or company, the public can walk and camp and collect mineral specimens on the claims, and with federal permission - potentially graze the claims, mine aggregate on the claims, and explore for and produce geothermal energy from the claims. **Mining claims do not meet the exclusive use test for a property tax**.

3. **Not Practical or Affordable -** It would be nearly impossible for a County Assessor to come up with a reasonable estimate of value for the federal land and the mineral resource beneath it during the exploration phase. It is difficult for even the most sophisticated experts, regulators, investors and savvy explorers to accurately estimate these values.

We don't Explore in California – OR Colorado or Oregon or Utah

There seems to be a perception that Nevada has the gold so the industry is essentially captive to whatever changes in tax policy the Legislature cares to make. That may be true in the few cases where a company has already invested $250 million to $1 Billion to get a mine up and running. But it is most certainly not true for the exploration and mining industry as a whole.

To highlight this point, while our group of companies explores in 8 western states, we DON'T explore in California or Colorado or Oregon or Utah - even though these states have lots of minerals. The problem is these states have enacted such onerous tax and regulatory policies that we, and many others, avoid them. We know that if we find a good deposit in those states, we will have a great deal of trouble getting anyone interested in our claims and in developing the mine. If the Legislature makes it too difficult to find and develop minerals in Nevada we will be driven to look elsewhere - perhaps Arizona or New Mexico – or even other countries.

In the 80s and 90s, Nevada was proudly known as the 3rd largest gold producer in the world after S. Africa and Australia. This is no longer true. Attached is an exhibit produced by the Nevada Bureau of Mines and Geology. It shows that the amount of gold mined in Nevada has dropped continuously since 1998 – a 15 year period. Production is now down to the levels of the 1980s. This has nothing to do with the housing bust or the recession. Rather, as it becomes more difficult to find the ore, and as regulatory and tax burdens increase, opportunities in other states and countries become more appealing and production here drops.

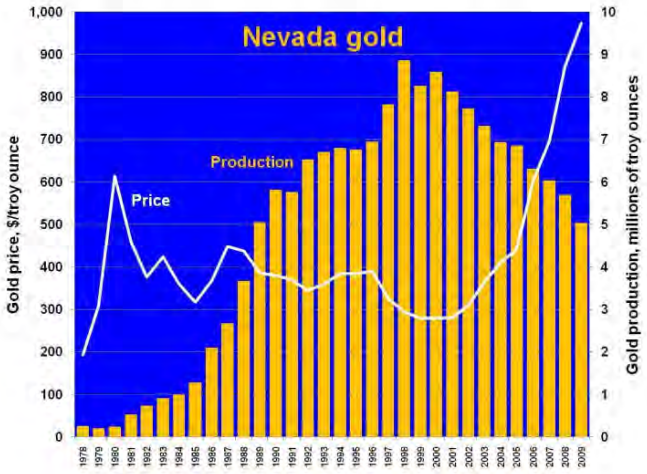
Unless you are extremely careful in how you tax and regulate the mining industry, and with what barriers you put in front of exploration, exploration in Nevada will dry up and the gold and other minerals you want to tax at production will dry up as well.

What is Needed

If SJR 15 passes, a companion bill will be needed to avoid driving the industry out of Nevada. SB 400 is that companion bill. SB 400 as currently drafted would exclude unpatented mining claims from being assessed a real property tax and allow exploration for minerals to continue. I ask that you tie passage of SJR 15 to passage of SB 400 – allowing you to enhance the state's coffers in a way that sustains the industry that feeds those coffers at the same time.

Exhibit A
Nevada Bureau of Mines and Geology Exhibit on Gold Production

Nevada's Gold Production Tax Base has Shrunk Since 1998[1]
Nevada Tax Policies Need to Help Reverse this Downward Gold Production Trend



Peak Gold Production:
8.86 million ounces in 1998

2008 Gold Production:
5.5 million ounces

2009 Gold Production:
5.0 million ounces

2010 Gold Production:
5.3 million ounces

2011 Gold Production:
5.5 million ounces

- **Exploration discovers new mineral deposits that can become future mines and sources of taxable revenue from mining**
- **Gold production has dropped due in part to reduced exploration activity on unpatented mining claims on Nevada's federal lands**
- **More mineral exploration will play an essential role in increasing future production of gold and other valuable minerals – Nevada's mineral tax base**

Nevada's Taxation Policies for Mining Need to Ensure that
Mineral Exploration and Mining Can Continue to Contribute to Economic Development

[1] Sources: NV Bureau of Mines & Geology Special Publications MI-2009/MI-2010 and NV Div. Mineral Resources, Special Publication SP-23

Battle Mountain General Hospital – Lander County

Senate Revenue and Economic Development Testimony

Net Proceeds of Mines

May 2, 2013

My name is Philip Hanna. I am the Administrator/CEO of Battle Mountain General Hospital (BMGH) located in Lander County, Nevada. Battle Mountain General Hospital is a twenty-five (25) bed federally designated Critical Access Hospital. Battle Mountain General Hospital through our Long Term Care Unit (5 Star Rated by the State of Nevada for six consecutive years), federally designated Rural Health Clinic and hospital services (Emergency Department, inpatient services, diagnostic laboratory, Radiology Services, etc.) is the only provider of healthcare services based in Lander County.

I am here today to speak specifically regarding the impact that "net proceeds of mines" has had on healthcare services in Lander County and the disquieting impact of the loss of these funds. As I have considered this situation I become immediately concerned that the prospect of redirecting "net proceeds of mines" to the State fails to consider the services that must be provided to adequately support the impact that mining operations have on rural communities.

Basic Hospital Services – To maintain a Critical Access Designation for Battle Mountain General Hospital there are numerous twenty-four hour services that are required to be provided. Due to the smaller population base in rural/frontier Lander County patient charges cannot fully support the costs of these services. "Net Proceeds of Mines" provide funds to help subsidize these services. If these funds are lost, that endangers the viability of providing the range of services required for our Critical Access Hospital designation. If the federal designation is lost

our reimbursement for services provided goes down thus putting more pressure on the ability of BMGH to provide twenty-four (24) services.

Emergency Medical Services – BMGH assumed responsibility for EMS services on July 1, 2012. Proud volunteer services in Austin, Battle Mountain and Kingston (the three major communities in Lander County) had been suffering a decline in the ability to recruit, train and retain EMS personnel. The State of Nevada had withdrawn the operating license for Austin and Kingston and Battle Mountain was in danger of a similar fate.

Not only would our 6,000 permanent residents be without EMS services, Interstate 80 that runs through Lander County would be without immediately available EMS Services. The stretch of Interstate 80 that crosses north central Nevada is known for the number and severity of accidents.

There have been documented cases of 911 calls not being responded too, heart attack victims attempting to drive themselves to the hospital and trauma victims being transported in the back of a pick-up truck.

The cash flow impact of the "Net Proceeds of Mines" enabled the BMGH Board of Trustees and the Lander County Commissioners to take a proactive role in establishing a full-time paramedic EMS Service to Northern Lander County and plans are being developed to reintroduce EMS Service to the southern part of the county. If the development of an EMS Service had been left solely to funding from continuing operations it is extremely doubtful that the program implemented in 2012 would have been possible. The County Commissioners would have also

been in the position of not having funds to help support EMS Service development if they did not receive "Net Proceeds of Mines."

Medical Staff Recruitment – Rural areas have an exceptionally challenging time recruiting medical providers. It is a routine experience that potential medical providers lose interest in Lander County when they discover it is not a suburb of Las Vegas or Reno. "Net Proceeds of Mines" have enabled BMGH to be proactive in recruiting efforts and develop compensation models that keep us more competitive with the salaries paid in urban areas. If we are not competitive with the market, we have virtually no chance to recruit these needed medical providers to our rural/frontier community.

Community Outreach - There are areas in Southern Lander County without local primary healthcare services and in a situation where they must travel up to 120 miles to fill prescriptions. "Net Proceeds of Mines" has enabled the BMGH Board of Trustees to make a commitment to open a Rural Health Clinic in Kingston to provide primary care and pharmacy services to provide these basic services to that community.

Updated Facilities – Through the conservative financial management of "Net Proceeds of Mines" BMGH has no long term debt attached to any of our facilities. Saved "Net Proceeds of Mines" funds are allowing the BMGH Board of Trustees to pursue a strategic planning process to development a strategy to replace outdated facilities and anticipate orderly establishment of new healthcare services that should be available in the community.

Hospital Equipment – "Net Proceeds of Mines" provide the funds to replace major hospital equipment. One example is replacing the CT Scanner at BMGH just over one year ago. The equipment that was being used prior to that time required that most head injuries (especially in children) be sent out for further diagnostic testing prior to being able to make a diagnosis. A pulmonary embolism could not be diagnosed at BMGH. All patients suspected of having this significant medical problem had to be transferred. There is a danger in even transferring patients with a pulmonary embolism. The quicker medical conditions can be diagnosed patient outcomes can be improved. This updated equipment allows that to occur now at BMGH. Patients without a pulmonary embolism were also being transferred at significant cost to the patient and family because a diagnosis could not be made prior to the new CT Scanner. "Net Proceeds of mines" has enabled BMGH to purchase a 15 Lead Electrocardiogram Machine for patients with heart disease issues, make greater use of telemedicine capabilities to reduce significant patient travel times for specialty services not available in Battle Mountain and expand the use of video conferencing equipment to enhance continuing medical education training opportunities for staff.

Cash Flow - For 2012-2013 BMGH will have $3,000,000 in bad debt and contractual allowance (an amount that Medicare and Medicaid decided they won't pay BMGH). For the 2013-2014 fiscal year BMGH is projecting $2,500,000 in bad debt and contractual allowance. That is over 20% of our budgeted charges for services BMGH provides. "Net Proceeds of Mines" provides cash flow to cover these significant losses.

Long Term Care – BMGH provides the only long term care services in Lander County. Continued reductions in Medicaid payments for that service has made the service largely unaffordable for BMGH to continue to provide. "Net Proceeds of Mines" provides the money to maintain these services for the community.

CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

May 2, 2013

TO: Nevada Assembly Taxation Committee Chair: BUSTAMANTEADAMS, PIERCE, BENITEZTHOMPSON, FRIERSON, HORNE, KIRKPATRICK, NEAL, GRADY, HARDY, HICKEY, KIRNER, STEWART.

FROM: Charleston Neighborhood Preservation w/members at varied sites throughout Clark County.

RE: **SJR15**

NO is the Vote we request from this Asm. Taxation Committee, after years of AND recent Study with research addressing this target.

Any tax increase sought by our elected representatives at the state level are most decidedly NOT For the benefit of the majority of constituents. We know you that you know this.

We greatly appreciate the Progressive Leadership Alliance of Nevada, while expecting a studied vote from our Elected Representatives considering us, the constituents remaining in Nevada who are full- time employed, many because of mining at the current level, is not reduced.

Please, NEVADA ASSEMBLY TAXATION COMMITTEE, encourage more people to become Nevadans, more Nevadans to be employed and (more constituents to vote for YOU.)

NO is the vote for your constituents, the other vote is Against us.
Please vote NO re. SJR 15.

Sincerely, June Ingram

June Ingram, PRESIDENT AND BOARD

Northeastern Nevada Regional Development Authority
1500 College Parkway, McMullen Hall, Room 120
* Elko, NV 89801 *775-738-2100 www.eceda.com

April 25, 2013

Nevada State Legislature
Assembly Taxation Committee
Chairperson Irene Bustamante Adams
401 South Carson ST.
Carson City, NV 89701-4747

Dear Assembly Taxation Committee members,

The Northeastern Nevada Regional Development Authority (NNRDA) represents Elko County and the cities of Elko, Carlin, Wells and West Wendover. We are very concerned at the Senate's recent actions to support SJR15 and SB400 and write to ask that you NOT support these bills. This legislation is poorly drafted and not well thought out. Had a thorough fiscal analysis been conducted, it would reveal that this legislation has the potential to create the opposite of its intention. It would also reveal that we are just adding to the already vulnerable revenue sources for the state.

Mining is a highly speculative industry with lots of ups and downs. Gold in particular with fluctuating prices will not produce a stable and sustainable revenue source for the state. Like gaming in a recession, gold production is subject to the market price and the cost to extract it. Raising their taxes may very well stop their current growth trend by rendering it too costly to pursue.

The mining industry, particularly gold and silver, must not be singled out to balance the state budget. The President is also seeking to balance the federal budget on the back of mining. This legislation has the potential to cripple the only industry that is thriving right now. Mining has added thousands of jobs over the past few years and can continue with that level of growth if we don't take away their means to do so. If the mines continue to grow, then everyone they deal with also grows; more taxes, more jobs, more support companies, more industry supporting them, construction, housing, retail, etc. All of those in turn create and pay more taxes.

The mining industry carried this state through the worst recession we've had, they voluntarily paid more taxes, paid them at the beginning of the year and accepted an additional tax for claims during the recession. They have always been good corporate citizens in the communities where they exist and for this state as a whole. They are already paying four times the taxes per employee (24,000) of the state average (6000). Mining should not shoulder the entire burden for more taxes to balance the state budget.

There are over 2300 companies in the supply chain of mining in this state that will be impacted by these bills, they represent over 14, 000 jobs throughout the state. The mines represent nearly 11,000 jobs. Beyond the mines and mine support, the communities and all other business in mining regions stand to lose. The mines do not have to be here, the large mines are global companies that can go where the economics make the most sense. The smaller mines will likely be put out of business with these bills. At a minimum, the industry will slow down dramatically which will eliminate jobs and stop the growth that we have enjoyed for the past several years.

It is most disturbing that a special interest group has gotten this far with proposed legislation that could literally bring the mining industry to its knees. Clearly those crafting the bill have little idea what mining entails or how much they

Assembly Committee: Taxation
Exhibit: EE Page 1 of 2 Date: 05/02/13
Submitted by: NE NV Regional Developmental Authority

already pay in taxes or perhaps they just don't understand economics, in any case, this bill has the potential to negatively impact Nevada's economy at a time when we are beginning to recover.

We the staff and Board of Directors of NNRDA urge you to vote against SJR15 and SB400.

Pam Borda, Executive Director NNRDA

David Zornes, Chairman NNRDA,
CEO Red Lion Casino, Gold Country Casino

Charlie Myers, Commissioner
Elko County

Jason Ashby, Commercial Manager, Joy Global

Steve Feasel, Councilman
City of Carlin

Gretchen Hubert, Councilwoman
City of Wells

Chris Melville, City Manager
City of West Wendover

Ted McElvain, District Manager, Southwest Gas

Kelly Wilson, Manager
Pacific Steel and Recycling

Betty Magney, Elko Daily Free Press

Shirley Alen, Small Business
Nevada State Bank

Kerry Aguirre, Director Business Development
Northeastern Nevada Regional Hospital

Mike Hachquet, General Manager
Gold Dust West

Pedro Ormaza, Owner, Ormaza Construction

Donald Heuser, Operations Manager
Savage Services

Don Newman, Executive Director
Elko Convention and Visitors Authority

Elko County Board of Commissioners

540 Court Street, Suite 101 • Elko, Nevada 89801
775-738-5398 Phone • 775-753-8535 Fax

COMMISSIONERS
Demar Dahl
Grant Gerber
Glen G. Guttry
Charlie L. Myers
R. Jeff Williams

ELKO COUNTY MANAGER
Robert K. Stokes

EXECUTIVE ASSISTANT
Michele A. Petty

May 1, 2013

Honorable Bustamante Adams, Chair
Assembly Committee on Taxation
401 South Carson Street
Carson City, NV 89701-4747

RE: Opposition to Senate Joint Resolution 15 of the 76th Session
Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Dear Assemblywoman Bustamante Adams:

The Elko County Board of Commissioners expresses its strong opposition to S.J.R. 15. As a rural County, industry recruitment and growth is difficult. We understand that our metropolitan areas are economic engines for Nevada. In a down economy, metropolitan areas experience difficulties with economic growth. The mining industry benefits all of Nevada's economy. Both the State of Nevada and Elko County enjoys the benefits of a robust mining industry. The mining industry has been a big component of the creation and history of Nevada. Mining has stepped up to assist our State's budget with early tax payments and provides employment, not only in rural areas where mines are located, but also through mine suppliers that are located throughout our State.

We are concerned that by singling out one component of our State's economy, it sends the message that Nevada will penalize any segment of its economy that appears to be doing well. S.J.R. 15 will add uncertainty to an industry that currently must invest billions of dollars and years of permit processes and mine development before profits are realized. One mining project in Elko County has had a three billion dollar investment to date and is still a few years from being in production. These extended development time frames can dampen investor interest. The mining industry operates under financial constraints that are driven by world markets. Additional uncertainty burdens an industry that must deal with many hurdles to maintain sustained profitability.

Mining is doing well, now. A little over a decade ago mining was not doing well; many local rural governments were dealing with severe budget downturns. Employee layoffs, budget reductions and important program cuts occurred. Elko County strives to develop budgets in good economic times that recognize downturns may return.

Elko County is concerned that S.J.R. 15 will have a negative impact upon net proceeds of mining allocated to County local government that is use as part of the County's budget.

Sincerely,

Glen G. Guttry, Chair

Charlie L. Myers, Vice Chair

Demar Dahl, Commissioner

R. Jeff Williams, Commissioner

A. Grant Gerber, Commissioner

cc: Governor Brian Sandoval
Senator Pete Goicoechea
Assemblyman John Ellison
Nevada County Commissions
Mr. Jeff Fontaine, Nevada Association of Counties

Comments on SBJ 15

I am Bob Dolezal, superintendent of the White Pine County School District. I registered at the May 2, 2013 Assembly taxation committee hearing of SJR15 I want to clarify my position. The Nevada Constitution was amended in 1989 to address concerns raised by various entities regarding the rate of taxation on mines and the distribution of the revenue. The authors of SBJ 15 have assured the rural counties that the removal of the constitutional protection will not impact the revenue that local government entities currently receive through the Net Proceeds of Mineral tax. I appreciate and support this position of the 2013 Nevada Legislature but have concerns that future legislative bodies may not maintain support for the current system. One of the rationales for providing local governments, including school districts, a portion of the Net Proceeds of Minerals is to provide assistance to these local governments entities adapt to the opening and closing of a mine located within their jurisdiction. Both the opening and closing of a mine is disruptive to the local community, a positive disruption when they open and a negative one when they close. The income from the net proceeds of minerals allows these local government authorities to better react and serve the community through the boom period and adjust to lesser services during the bust period. School Districts have to hire additional staff, often have to provide additional classrooms and experience greater demands on transportation and technology with the opening of a new mine. The Net Proceeds gives the school district funds to make these adjustments and to create a greater ending fund balance to assist in paying for facilities in the event the mine ceases operation before the district has paid off the new facilities or equipment.

I would like to suggest an Amendment to SJR15 in which the constitutional maintains language guaranteeing local government entities a portion of the Net Proceeds of Minerals and authorizing the Nevada Legislature the power to determine the rate of the Net Proceeds of Minerals Tax.

Thank you for your time and for all you do for Nevada

Bob Dolezal

Superintendent, White Pine County School Disttrict.

BEHRE DOLBEAR
BEHRE DOLBEAR GROUP INC.
founded 1911 MINERALS INDUSTRY ADVISORS

2013 Ranking of Countries for Mining Investment: "Where Not to Invest"

Compiled and edited by Chris Wyatt and Taylor McCurdy

Since 1999, the Behre Dolbear Group Inc. has compiled annual political risk assessments of the key players in the global mining industry. Over time, our assessment indicates a positive correlation between the growth of a nation's wealth and the prosperity of its mining industry – only when a country recognizes its critical need to adapt and restructures burdensome policy – will it truly optimize this economic potential.

While our perspective is often considered provocative, it is our intent to highlight countries whose policies and business conditions promote investment growth in the mining sector. Behre Dolbear welcomes continued feedback from our clients and industry professionals alike. Both positive and negative dialogue enables Behre Dolbear to improve its assessment.

This year's survey, as it has in the past, concentrates on specific countries, regional issues, and notable trends. Geology and mineral potential were not considered, as the fact that exploration, development, and mining activity are occurring confirms the existence of such potential. Only factors relevant to "political risk" have been considered. We do not make an effort to include mitigating factors such as economic returns or an investor's relevant experience in a particular country as part of our ranking.

The Behre Dolbear Group of companies is comprised of more than 150 professionals based out of 12 offices around the globe. The views expressed herein reflect the collective responses to our annual internal survey. Our professionals' opinions are valued as they have the unique opportunity to conduct business and evaluate investments within many different countries. In 2012, Behre Dolbear completed 220 projects in over 55 countries. Our global reach through the depth and diversity of our international involvement continuously builds our perspective on the industry. Our rankings in this annual survey are also based, in part, on confidential sources and public databases. Behre Dolbear has referred to the *Index of Economic Freedom* (a Wall Street Journal/Heritage Foundation publication), the World Economic Forum's *Global Competitiveness Report*, and publications from Transparency International. Our ranking by the nature of the factors incorporated in its determination is qualitative, not quantitative.

The 25 countries considered in this year's survey are ranked based on 7 criteria:

- the country's economic system
- the country's political system
- the degree of social issues affecting mining in the country
- delays in receiving permits due to bureaucratic and other issues
- the degree of corruption prevalent in the country
- the stability of the country's currency
- the competitiveness of the country's tax policy

Each criterion is rated on a qualitative scale from 1 (worst) to 10 (best) that reflects conditions that promote investment growth in the mining sector. Accordingly, the maximum score attainable for a country is 70 points.

materially undervalued. In the short term, a stronger Yuan reduces the competitiveness of its export sector and puts downward pressure on job growth – a key factor impacting stability. Greater transparency in China's economy is long overdue and could be facilitated, in part, by a reduction of its currency controls.

Mexico was the only country in this year's survey to see its rating increase. For the first time in 2.5 years, Mexico saw a fall in its inflation rate. The declining rate has led to more stable economic conditions for mining activity.

The highest-rated countries for currency stability are:

- Canada (9) unchanged
- Australia (9) unchanged
- Brazil (9) unchanged
- Chile (8) unchanged
- United States (7) unchanged

The lowest-rated countries are:

- D.R.C. (1) unchanged
- Russia (2) unchanged
- Zambia (3) unchanged
- Indonesia (3) unchanged

TAX REGIME

The total taxes applicable to a mining project – duties and imposts, income taxes, royalties, and severance and excise taxes – are considered in this section. Behre Dolbear's experience is that once the total "government take" from combined taxes reaches 50%, a mining project's economic viability, during periods of normal commodity pricing, is threatened. Stable and predictable tax policies are essential in evaluating a mining project's perceived risks and viability.

The impact of increasing government debt, combined with relatively recent rising commodity prices, has inspired officials in almost every minerals-producing nation to consider raising mining-related taxes and fees. Mineral-related revenue, which a few years ago was rising in line with commodity prices, has recently decreased due to falling commodity prices, even though the amount of minerals produced has subsequently increased. The tax raising conversations have intensified in efforts to monetize mineral production.

The inspiration for these efforts may have been bolstered by Australia's actions over the past year to increase taxes, both directly and indirectly on mining operations. Such discussions can result in uncertainty, delays, and limitations on investment. The past delays at the Oyu Tolgoi copper project in Mongolia present a clear example of how such uncertainty delays mining developments.

In spite of the current climate, Behre Dolbear did not reduce the ratings of any of the countries in this year's survey as last year's survey incorporated much of the current sentiment. Meanwhile, one country (United States) rose in this year's survey. Due to the current political stalemate and its inability to raise taxes, the United States rating increased by 1 point in this year' survey

May 3, 2013

Chairman Irene Bustamante Adams
Assembly Taxation Committee
401 S. Carson Street
Carson City, NV 89701-4747

Dear Chairman Bustamante Adams and Assembly Taxation Committee Members,

I attended the Assembly Taxation Committee meeting relating to SJR 15. I had hoped to speak on the bill, but I am glad to have the opportunity to send my comments in writing. SJR 15 is concerning to many people in Nevada. Its impacts could go beyond the questions addressed at Thursday's meeting. Because of the uncertainties relating to a new mining tax structure, SJR 15 will have impacts on communities and families closest to mining. Undoubtedly, the passing of this bill will slow mining and exploration growth for years to come. The timing could not be worse.

As a person with a family history in mining that goes back to the early 1900s and as a consultant working in community relations for the mining industry, I can speak on this subject firsthand. My ancestors were some of the first turquoise miners in Nevada and expanded into barite in the late 1970s. Mining has employed many of my relatives for decades. All of my immediate family members are employed by mining. My husband works in public relations and one of my sons is a project manager and the other is an electrician. I and my daughter-in-law are both in community relations. We work for various Nevada mining companies. Both of my sons went to college utilizing mining scholarships and each has held steady employment in mining. I credit Nevada's mining industry for my family's opportunities and achievements.

You've heard a lot about the cyclical nature of mining, but as a former economic development director for Elko County I can testify that it is not the case today. I also ran the Elko Area Chamber of Commerce from late 1999-2005, a time when gold prices were much lower. The mines were not boarded up and the mining companies did not walk away. There were layoffs, but the mines continued to operate, hire, and support the towns in northeastern Nevada. Businesses continued to operate and it was understood that the big growth was over and that towns would need to stabilize and businesses would need to be more competitive. It is my experience that community sustainability is important to today's mining companies.

Mining has held a steady place in Nevada's industrial mix for more than 100 years and it should remain an important part of its mix. As you know, the taxes received from mining help sustain most of northern Nevada's rural communities, but the relative value is more than the taxes paid by the mining companies. It is the skilled workforce they provide for the state and the valuable infrastructure they help to bring to rural Nevada.

I would like to ask the Assembly Taxation Committee to vote against SJR 15 and instead instruct the Nevada Department of Taxation and Nevada's mining industry to work collaboratively to determine a method of taxation to raise additional revenue for the state and not harm an industry that we frankly need to maintain and provide incentive to grow.

Mining is an important industry in Nevada. It is part of our history and extremely important to many Nevadans' futures.

Sincerely,

Elaine Barkdull-Spencer
4679 Bradford Lane
Reno, Nevada 89519

COMSTOCK
MINING

May 3, 2013

Irene Bustamante Adams, Assemblywoman
Nevada State Legislature
401 S. Carson Street
Carson City, NV 89701-4747

Dear Ms. Bustamante Adams,

During the meeting of the Taxation Committee on May 2, 2013, a representative of the Comstock Residence Association rose in support of SJR 15. I feel that his erroneous assertions should not be allowed to stand uncontested. For several months, a handful of people in his organization have exploited every opportunity to distort the record in their effort to stop mining within the Comstock Mining District. We am very proud of Comstock Mining, Inc. We are a Nevada-domiciled corporation that has raised millions of dollars in investments and employs over one hundred skilled workers. We have also exhibited a consistent commitment to the highest environmental standards, to the promotion of the historic resource, to comprehensive reclamation, and to the creation of a sustainable economy for the historic district.

The proponent of SJR 15, who criticized my company, seems more interested in ending mining than in arriving at changes to a taxation formula. The commitment of Comstock Mining, Inc., to the environment is evidenced by our voluntarily setting aside a 1% net smelter royalty of its bullion sales for enhanced reclamation and restoration efforts and a 1% net smelter royalty to invest in historic resource protection, preservation and restoration on the Comstock. I have always asked people to judge my company by what we are doing not by what others are saying, and I am extremely proud of our record.

Some of the testimony on May 2, 2013 asserted that the work of Comstock Mining, Inc., is harmful to the Virginia City Landmark District and to the tourism industry. Our company has purchased the Gold Hill Hotel and operated it continuously. We are invested in the tourism industry, and we are committed to seeing that industry prosper. The district has over 14,000 acres, and the mining of a few hundred of those acres - removed from most development - has not had a negative effect on tourism. On the contrary, feedback from the Virginia City merchants has been overwhelming positive. When the life of our mine comes to a close, the reclaimed land together with an economy made more robust because of our investments promises to yield a regional asset that is far better off than what we found it at the beginning of our operation. That is our commitment to the state of Nevada and the Historic Comstock Lode.

Thank you for your time. If it would be possible for you and your committee to visit our operation, you would be very welcomed.

Kindest regards,

Corrado De Gasperis
President and CEO
Comstock Mining Inc. and Gold Hill Hotel Inc.

P.O. BOX 1118 • 1200 AMERICAN FLAT ROAD • VIRGINIA CITY, NV 89440
MAIN (775) 847-5272 • FACSIMILE (775) 847-4762

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Seventh Session
May 16, 2013

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 2:36 p.m. on Thursday, May 16, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Peggy Pierce, Vice Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

Minutes ID: 1177

I think that was an important thing to me, and maybe to this Committee. I will be supporting it.

THE MOTION PASSED UNANIMOUSLY.

I will give the floor statement to Assemblyman Stewart. I will close the hearing on S.B. 301 (R1) and open the hearing on Senate Joint Resolution 15 of the 76th Session. I will turn it over to our fiscal analyst, Mr. Nakamoto.

Senate Joint Resolution 15 of the 76th Session: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Michael Nakamoto, Deputy Fiscal Analyst:
The last bill on today's work session is Senate Joint Resolution 15 of the 76th Session. The work session document (Exhibit F) is located in Nevada Electronic Legislative Information System for the members of the public, as well as those listening on the Internet. The members of the Committee also have the work session document in their binders.

This measure was sponsored by the Senate Committee on Revenue and Economic Development and was heard in this Committee on May 2. Senate Joint Resolution 15 of the 76th Session proposes to amend Article 10, Section 1, of the *Nevada Constitution*, which provides for uniform and equal rates of assessment on taxation, to remove the exception to this provision provided for mines and mining claims which, under current law, shall be assessed and taxed only as provided in Article 10, Section 5, of the *Nevada Constitution*.

Additionally S.J.R. 15 of the 76th Session proposes to repeal Article10, Section 5 of the *Nevada Constitution*. This section allows the Legislature to impose a tax on the net proceeds of minerals at a maximum rate of 5 percent, prohibits the imposition of any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost, provides for the distribution of this tax revenue among local governments and school districts, and provides for an exemption from property taxes from patented mines and mining claims where at least $100 worth of labor has been performed.

An overview of this joint resolution was given by Mr. Powers from the Legislative Counsel Bureau's Legal Division. Testimony in support of the joint resolution was provided by Ms. Turner, Mr. Ginsburg on behalf of the Progressive Leadership Alliance of Nevada, Ms. Ocampo, Mr. Murillo,

Mr. Rocha, Ms. McGill, and Mr. McCarthy. The testimony in opposition was given by Mr. Crowley, Mr. Wadhams, Mr. Brown, Councilman Perry from the City of Elko, Assemblyman Ellison, Mr. Garza on behalf of White Pine County, Superintendent Zander from the Elko County School District, and Assemblyman Hansen. Questions were answered by Ms. Rubald on behalf of the Department of Taxation.

I would also note on this joint resolution that pursuant to Article 16, Section 1, of the *Nevada Constitution* and Chapter 218D of the *Nevada Revised Statutes*, there are provisions contained within this joint resolution which must be approved by the Legislature during the 2011 Session, which it already has, as well as the 2013 Session, followed by voter approval at the general election to be held on November 4, 2014, in order to be ratified and become part of the *Nevada Constitution.*

If anyone has any questions about the work session document, I will answer them at this time.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee on the work session document?

Assemblywoman Neal:
Do you mean questions about the bill, because I have questions about the aftermath, like what is the plan? Is there going to be an interim committee? Those are my questions. I do not know where that falls. I am curious about the tax ideas, and how are we going to handle those tax ideas after the fact?

Chairwoman Bustamante Adams:
That would not be a work session, but would be after what we decide as a body that we are going to go ahead and do in the interim.

Assemblyman Hickey:
This would only move it along for a vote of the public in November. I do not think we are really authorized to do anything until this is passed and we return to possibly reset something next session. Correct me if I am wrong.

Chairwoman Bustamante Adams:
I know there is another bill, Senate Bill 400, that has the provisions of what would happen if this were to go, so I know we need to consider that. That has not come before the Committee yet, and that does have the answers to your questions, Assemblywoman Neal, but not in this work session.

Assemblywoman Neal:
I just want to put it out there that it is a yes, but there is some reluctance.

Chairwoman Bustamante Adams:
Are there any other questions from the members of the Committee? [There were none.] I will entertain a motion to do pass S.J.R. 15 of the 76th Session.

> ASSEMBLYWOMAN PIERCE MOVED TO DO PASS SENATE JOINT RESOLUTION 15 OF THE 76TH SESSION.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN GRADY, HARDY, HICKEY, KIRNER, AND STEWART VOTED NO.)

Chairwoman Bustamante Adams:
I will assign the floor statement to Assemblywoman Pierce, and I will be your backup if you are not able to. I will close the hearing on S.J.R. 15 of the 76th Session.

Are there any in Las Vegas or Carson City who would like to provide public comment? [There was no one.] We are in recess [at 2:53 p.m.] until the call of the Chairwoman.

[The Assembly Committee on Taxation was called back to order at 1:14 p.m. on Monday, May 20, 2013.] The meeting is adjourned [at 1:15 p.m.].

RESPECTFULLY SUBMITTED:

_____
Gina Hall
Committee Secretary

APPROVED BY:

_____
Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: _____

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Taxation
This measure may be considered for action during today's work session.
May 16, 2013

SENATE JOINT RESOLUTION 15 OF THE 76TH SESSION

Proposes to amend the *Nevada Constitution* to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Sponsored by:	**Senate Committee on Revenue and Economic Development**
Date Heard:	**May 2, 2013**
Fiscal Impact:	**Effect on Local Government: No.**
	Effect on the State: No.

Summary

Senate Joint Resolution 15 of the 76th Session proposes to amend Article 10, Section 1 of the *Nevada Constitution*, which provides for uniform and equal rates of assessment on taxation, to remove the exception to this provision provided for mines and mining claims which, under current law, shall be assessed and taxed only as provided in Article 10, Section 5 of the *Constitution*.

Additionally, Senate Joint Resolution 15 of the 76th Session proposes to repeal Article 10, Section 5 of the *Constitution*. This section allows the Legislature to impose a tax on the net proceeds of minerals at a maximum rate of 5 percent, prohibits the imposition of any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost, provides for the distribution of this tax revenue among local governments and school districts, and provides for an exemption from property taxes for patented mines and mining claims where at least $100 worth of labor has been performed.

Testimony

Kevin Powers, Chief Litigation Counsel, Legal Division, Legislative Counsel Bureau, provided an overview of the resolution.

Testimony in support of the resolution was provided by the following individuals:

- Marla Turner, private citizen
- Michael Ginsburg, representing the Progressive Leadership Alliance of Nevada
- Mayra Ocampo, representing SEIU Nevada and We Are Nevada
- Ruben Murillo, representing the Clark County Education Association and the Nevada State Education Association
- Guy Rocha, retired State Archivist
- Christy McGill, representing the Human Services Network
- Joe McCarthy, representing the Comstock Residents Association

Assembly Committee: Taxation
Exhibit: F Page 1 of 2 Date: 05/16/13
Submitted by: Michael Nakamoto

Testimony in opposition to the resolution was provided by the following individuals:

- Tim Crowley, President, Nevada Mining Association
- James Wadhams, representing the Nevada Mining Association and Newmont Mining Corporation
- Michael Brown, Vice President of Corporate and External Affairs, Barrick Gold Corporation
- Richard Perry, Member, Elko City Council
- Assemblyman John Ellison, Assembly District No. 33
- Jim Garza, representing White Pine County
- Jeff Zander, Superintendent, Elko County School District
- Assemblyman Ira Hansen, Assembly District No. 32

Terry Rubald, Chief, Division of Local Government Services, Nevada Department of Taxation, provided answers to questions from Committee members.

No amendments were proposed on the resolution.

Special Note

Pursuant to Article 16, Section 1 of the *Nevada Constitution* and Chapter 218D of the *Nevada Revised Statutes*, the provisions contained within this joint resolution must be approved by the Legislature during the 2011 and 2013 Sessions, followed by voter approval at the November 4, 2014, General Election, in order to be ratified.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Seventh Session
June 3, 2013

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 12:47 p.m. on Monday, June 3, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblywoman Peggy Pierce, Vice Chairwoman (excused)
Assemblyman William C. Horne (excused)

GUEST LEGISLATORS PRESENT:

None

Minutes ID: 1389

STAFF MEMBERS PRESENT:

Russell J. Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Kevin C. Powers, Chief Litigation Counsel
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Lesley Pittman, representing the Nevada Mineral Exploration Coalition

Chairwoman Bustamante Adams:
I will open the hearing on Senate Bill 400 (2nd Reprint). Our primary sponsor is delayed, so we are just going to go ahead and start with our legal counsel to give an overview of S.B. 400 (R2).

Senate Bill 400 (2nd Reprint): Revises provisions governing the taxation of mines, mining claims and the extraction of minerals. (BDR 32-620)

Kevin C. Powers, Chief Litigation Counsel:
As you know, we are nonpartisan legal staff and do not urge or oppose any particular piece of legislation; however, we do provide counsel and advice regarding legal effects and consequences of legislation.

Before you today is Senate Bill 400 (2nd Reprint). This is a complementary piece of legislation to Senate Joint Resolution 15 of the 76th Session. As you know, that joint resolution proposes to amend the *Nevada Constitution*, to remove provisions in the *Nevada Constitution* that govern the taxation of mines, mining claims, and the extraction of minerals. That will be on the ballot on November 4, 2014, and this legislation is complementary to it. If S.J.R. 15 of the 76th Session passes, this legislation will become effective on November 25, 2014, which is the fourth Tuesday in November, when the official canvass of the votes take place. So, if S.J.R. 15 of the 76th Session passes it will become effective on November 25, 2014, and this bill would become effective as well.

Just to give you a little background on the second reprint, in the Senate Finance Committee they were presented a mock-up. That mock-up was then reviewed by a working group, which involved interests and individuals who represented the counties, the Department of Taxation, the mining companies, and also the exploration companies. That mock-up was further refined, and that is the amendment that was adopted by the Senate Finance Committee and also by

the whole Senate. That is what is before you today, the second reprint of S.B. 400 (R2). I will provide a quick overview of the bill.

There are four major areas that S.B. 400 (R2) deals with. Those are real property taxes, personal property taxes, an excise tax on mineral extraction, and then conforming changes.

The overall objective of S.B. 400 (R2) is to ensure that if S.J.R. 15 of the 76th Session is passed by the voters and becomes effective, the current tax structures under those four different categories remains the same. That way during the next session the Legislature will have the ability to revisit all of these issues, to determine how to best tax mining, mining claims, and minerals as a matter of public policy.

Turning to those four major categories, first up are real property taxes. That involves the land, the mines, and also the mining claims, because that is a possessory interest in lands, so mining claims are also a form of real property.

There are three main sections that deal with real property. The first is section 2.7, on page 16 of the 2nd reprint. Under the *Nevada Constitution*, Article 10, Section 1, subsection 8, the Legislature may exempt from the property tax any property that is used to encourage the conservation of energy or the substitution of other sources of energy for fossil sources of energy. This provision in the bill, section 2.7, exempts real property that is used in a geothermal operation under this provision of the *Nevada Constitution*. However, I have to make clear that this exemption does not extend to improvements to the land, or any of the accessory property that is used in the mining operation. That property right now is subject to the property tax. It will continue to be subject to the property tax after S.B. 400 (R2), if it were to become effective. It is essentially just the land used in the geothermal operation. That is exempt now, and this will ensure that the exemption continues in the future.

The next section under the real property tax would be section 3.5. Existing law provides that if real property is exempt for a reason, and then it is leased, loaned, or used for a different reason, that extra use may be subject to the property tax. What section 3.5 provides is that if exempt property is possessed or used for a mining claim, the property does not lose its exemption. This will come into play for unpatented mining claims. They are on federal property. That federal property is exempt from taxation, so a person's possession or use of that property for an unpatented mining claim will remain exempt from the real property tax.

Section 4 deals with the valuation of property. Under the *Nevada Constitution*, Article 10, Section 1, subsection 1, the Legislature must adopt regulations that provide for a just valuation of taxation for all property subject to the property tax. What this provision provides is that when determining the taxable value of property, the value of any mineral deposit attached to the land is not included in that taxable value. The purpose of that is to provide that taxation of minerals will occur only when they are extracted or severed from the land. As long as the mineral sits in its natural state, in the land, then it is not included in the taxable value of the property for real property tax purposes.

Finally, I also want to emphasize that an earlier version of the bill was going to repeal existing statutory provisions that exempted unpatented and patented mining claims from the real property tax. Those statutes are not being repealed in the second reprint, so those statutes will remain in place. That covers the real property tax components of S.B. 400 (R2).

The personal property tax components are in section 2.5 of the bill, on page 16 of the 2nd reprint. That amends *Nevada Revised Statutes* (NRS) Chapter 361 to provide an exemption from the personal property tax for extracted minerals, and also for the mineral royalties paid by the extractive operation. Those are currently exempted from the personal property tax, and this bill will continue those exemptions, as long as those items, the extracted minerals and the mineral royalties, are subject to the excise tax upon mineral extraction. We will go to our next category.

Currently, as you know, there is a net proceeds tax on minerals extracted from the ground. This bill, in sections 10 to 32, changes that current net proceeds tax to an excise tax on mineral extraction and royalties, and that is for the privilege of engaging in mining in the state of Nevada. So several sections of the bill deal with that. Sections 10 and 12 add a statement of legislative intent, and a specific indication to explicitly convey the Legislature's intent that this bill is imposing an excise tax and not an ad valorem or property tax.

Another provision of note in sections 10 to 22, is section 21 that amends an existing statute, NRS 362.135, to provide that any person who wants to challenge the excise tax must pay the tax under protest while the challenge is pending. If they fail to pay their tax under protest, they would lose their ability to challenge the excise tax.

Section 22 amends NRS 362.140 to once again emphasize that there is hereby imposed an excise tax upon mineral extraction. And in section 22, the existing tax rates that are collected on the net proceeds stay the same under the excise tax. So, for each of the mining operations, what they are paying

now under the net proceeds tax will be the same as what they are paying under the excise tax.

One other important provision to emphasize is section 25 of the second reprint. That amends NRS 362.170. That is the statute under which a portion of the excise tax will be distributed to local governments. This statute is preserved and remains the same, so the amount of money that is distributed to the local governments now, under the net proceeds tax, will be the same amount that is going to be distributed under the excise tax. That will not change.

Finally, as to the conforming changes throughout the bill, other than those sections, you will see a lot of references to net proceeds for mineral extraction subject to the excise tax. All those conforming changes are done to ensure that how net proceeds are currently treated, when it comes to calculating taxes, spending, and revenue at the local level, that assessed valuation, will stay the same after the enactment of S.B. 400 (R2) and S.J.R. 15 of the 76th Session. For those calculations where net proceeds are used in assessed value, they will remain the same, even with the implementation of the excise tax. That will ensure that however the counties and other taxing districts do their business now, they will continue to do that same type of operation under S.B. 400 (R2).

As I mentioned before, the effective date again is November 25, 2014, and it is contingent on the passage of S.J.R. 15 of the 76th Session. That is an overview of the bill. I am open to any questions you may have.

Chairwoman Bustamante Adams:
Thank you, Mr. Powers. I know some of the Committee members had the opportunity to hear this in the Assembly Committee on Ways and Means, but there are some who did not. Assemblywoman Neal, I know when we were hearing S.J.R. 15 of the 76th Session you asked about this bill. These details are the companion piece to that portion. Are there any questions from the members of the Committee? [There were none.] We will transition to those in support of S.B. 400 (R2).

Lesley Pittman, representing the Nevada Mineral Exploration Coalition:
We are in full support of S.B. 400 (R2).

Chairwoman Bustamante Adams:
Are there any others in support? [There was no one]. Are there any in opposition to S.B. 400 (R2). [There was no one.] Are there any in neutral? [There was no one.]. I will close the hearing on S.B. 400 (R2) and go into a work session on S.B. 400 (R2). I will turn it over to our fiscal analyst, Mr. Nakamoto.

Senate Bill 400 (2nd Reprint): Revises provisions governing the taxation of mines, mining claims and the extraction of minerals. (BDR 32-620)

Michael Nakamoto, Deputy Fiscal Analyst:
The short response I could give is, whatever Mr. Powers just said about Senate Bill 400 (2nd Reprint). I would just note, like Mr. Powers said, that it amends various provisions of existing law governing the taxation of mines, and is contingent upon the passage of Senate Joint Resolution 15 of the 76th Session at the November 2014 ballot. If there are any questions, I will answer them at this time.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee on the work session overview? [There were none.] I will entertain a motion to do pass S.B. 400 (R2).

> ASSEMBLYWOMAN NEAL MOVED TO DO PASS SENATE BILL 400 (R2).
>
> ASSEMBLYMAN HARDY SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HORNE AND PIERCE WERE ABSENT FOR THE VOTE.)

Chairwoman Bustamante Adams:
Is there any public comment at this time? [There was none.] I will recess upon the call of the Chairwoman [at 12:59 p.m.].

[The meeting was adjourned at 11:59 p.m.]

RESPECTFULLY SUBMITTED:

_____
Gina Hall
Committee Secretary

APPROVED BY:

_____
Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: _____

FLOOR ACTIONS

AMENDMENTS ON SECOND READING
FLOOR VOTES AND STATEMENTS
OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS* (HTTP://WWW.LEG.STATE.NV.US/SESSION/77TH2013/JOURNAL/), WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

NEVADA LEGISLATURE

Seventy-Seventh Session, 2013

SENATE DAILY JOURNAL

THE FIRST DAY

CARSON CITY (Monday), February 4, 2013

Senate called to order at 11:10 a.m.

President Krolicki presiding.

President Krolicki requested that his remarks be entered into the Journal.

It is an absolute pleasure to be with all of you today. We have lots of smiling faces. We have some new faces and familiar faces. From my position here, you are all most welcome. I assure you I will do my utmost in a fair and equitable manner as I preside over this body. It is a pleasure for me to have the same eyeshot looking at our majority and minority leaders; I appreciate the proximity of leadership in the Chamber. I also want to welcome the temporary Secretary of the Senate, Mr. Byerman, to the body. It is always a pleasure and I thank you for sharing your family with me back here. To the folks who do so much work, every day even we when go home and you continue to work, our Front Desk staff. And to Jerry Pieretti, our Sergeant at Arms, and your crew. Welcome.

Prayer by Keith Jarvis, Stake President, Las Vegas Nevada Central Stake, Church of Jesus Christ of Latter-day Saints.

Our beloved Heavenly Father, we humbly come before you this beautiful day. We thank thee for all of the wonderful blessings that thou has showered upon us. We thank thee for the great State of Nevada. We thank thee for the pioneers who helped first settle this area and for their vitality; we pray that vitality will carry over through this Session. We are thankful to be gathered together for the 2013 Session of the Nevada Legislature. We pray for support to be with the leaders and supporting members of this Session. We ask a blessing upon Governor Sandoval, the Senate, the Assembly and all who will share their talents to make this a very successful year. We thank Thee for the excellent caliber of our wonderful and precious children and great youth. We ask a protective blessing to be upon them, to help them, to guide and direct them. Please bless our educators and administrators to collectively meet the educational needs of our children and youth. We ask a blessing upon our armed forces, to protect them, and a blessing upon our wonderful veterans, that Thou will strengthen them. We ask for wisdom, dear Father, to effectively manage the budget this year. We ask that our economic development will improve. Please bless our citizens who are economically challenged, that Thou will provide comfort and strength. May we proceed in a spirit of love to one another, and seek a spirit of compassion toward each other throughout this Session. May we function in the spirit of humility, that our weakness will be a strength. May we regularly call upon Thee for divine guidance and inspiration, for support in all we do, in the sacred name of our beloved son Jesus Christ.

AMEN.

REMARKS FROM THE FLOOR

PRESIDENT KROLICKI:

We are delighted to have Boy Scout Troop 33, sponsored by the Rotary Club of Carson City, which was established in 1939, with us here today. The Scout participants are: Scout Leader: Mr. Ken Kruse; Star Scout, Zachary Kruse; Star Scout, Daniel Tooker; and Second Class, Fred Allen.

(a) The Speaker of the Assembly;

(b) The Majority Leader of the Senate; or

(c) The Director of the Legislative Counsel Bureau, if the complaint involves the conduct of the Speaker of the Assembly or the Majority Leader of the Senate.

➥ *The complaint must include the details of the incident or incidents, the names of the persons involved and the names of any witnesses.*

6. The Speaker of the Assembly, the Majority Leader of the Senate or the Director of the Legislative Counsel Bureau, as appropriate, shall cause a discreet and impartial investigation to be conducted and may, when deemed necessary and appropriate, assign the complaint to a committee consisting of Legislators of the appropriate House.

7. If the investigation reveals that sexual harassment, other unlawful harassment, retaliation or other conduct in violation of this policy has occurred, appropriate disciplinary or remedial action, or both will be taken. The appropriate persons will be informed when any such action is taken. The Legislature will also take any action necessary to deter any future harassment.

8. The Legislature encourages a Legislator to report any incident of sexual harassment, other unlawful harassment, retaliation or other conduct inconsistent with this policy immediately so that the complaint can be quickly and fairly resolved.

9. All Legislators are responsible for adhering to the provisions of this policy. The prohibitions against engaging in sexual harassment and other unlawful harassment which are set forth in this Rule apply to employees, Legislators, lobbyists, vendors, contractors, customers and any other visitors to the Legislature.

10. This policy does not create any enforceable legal rights in any person.

VOTE ON GENERAL APPROPRIATION BILL

Rule No. 21. Waiting Period Between Introduction and Final Passage.

A period of at least 24 hours must elapse between the introduction of the general appropriation bill and a vote on its final passage by its House of origin.

USE OF LOCK BOXES BY STATE AGENCIES

Rule No. 22. Duties of Senate Standing Committee on Finance and Assembly Standing Committee on Ways and Means.

To expedite the deposit of state revenue, the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means shall, when reviewing the proposed budget of a state agency which collects state revenue, require if practicable, the agency to deposit revenue that it has received within 24 hours after receipt. The Committees shall allow such agencies to deposit the revenue directly or contract with a service to deposit the revenue within the specified period.

Senator Denis moved the adoption of the resolution.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

COMMUNICATIONS

MESSAGES FROM THE SECRETARY OF STATE

STATE OF NEVADA

DEPARTMENT OF STATE

CARSON CITY, NEVADA, January 3, 2013

DAVID BYERMAN, *Secretary of the Senate*, 401 S. Carson Street, Suite 1206, Carson City, Nevada 89701-4747

DEAR MR. BYERMAN:

This letter is in acknowledgment of the transfer of Senate Joint Resolution Nos. 14 and 15 of the 76th Legislative Session pursuant to NRS 218.390(2). SJR 14 is from the 76th Legislative Session and was assigned file number 26. SJR 15 is from the 76th Legislative Session and was assigned file number 44. Pursuant to your request, these joint resolution's engrossed and

enrolled originals were transferred from the Elections Division to your office on Thursday, January 3, 2013.

In addition, this is also a transmittal letter of Senate Bill Nos. 115, 188, 207, 208, 254, 304, 360 and 418 of the 76th Legislative Session, which were vetoed by the Governor after the end of the 76th Legislative Session. The enclosed, engrossed and enrolled copies of Senate Bill Nos. 115, 188, 207, 208, 254, 304, 360 and 418 are being transferred to the 77th Legislative Session pursuant to NRS 218.430(2) from the Elections Division to your office on Thursday, January 3, 2012.

Respectfully,
ROSS MILLER
Secretary of State

MESSAGES FROM THE GOVERNOR

STATE OF NEVADA
EXECUTIVE CHAMBER

CARSON CITY NEVADA, June 13, 2011

THE HONORABLE ROSS MILLER, *Secretary of State*, Capitol Building, Carson City, Nevada 89710

DEAR SECRETARY MILLER:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill 207, which is entitled:

AN ACT relating to employment; authorizing the imposition of an administrative penalty against an employer who misclassifies and employee as an independent contractor or otherwise fails to properly classify a person as an employee of the employer under certain circumstances;' and providing other matters properly relating thereto.

This bill provides the Labor Commissioner with authority to impose additional penalties against employers that misclassify employees as independent contractors or otherwise fail to properly classify persons as employees. For each unintentionally misclassified or improperly classified person, the Commissioner may impose a penalty up to $1,000. For each person who is willfully misclassified or improperly classified, the penalty must be between $5,000 and $15,000. For the second offense, the penalty must be between $15,000 and $25,000 for each person that is misclassified or improperly classified. For the third or subsequent offense, the penalty must be at least $25,000 for each misclassified or improperly classified employee. Under the bill, the Commissioner also has, in the case of a third or subsequent offense, the authority to submit notice to the Secretary of State of the suspension of the employer's business license for not more than three years. The bill also subjects those who knowingly advise an employer to misrepresent the classification of duties of an employee to civil liability actions brought by the Attorney General.

The efficient administration of the State's labor laws is essential to achieving fair and equitable labor markets. Towards that end, the Commissioner and the Attorney General should be adequately empowered to deter and punish those who violate our labor laws. The authority provided for in this bill, however, is not clearly aimed towards that end. Instead, it creates duplicative and unnecessary authority which serves to complicate an already intricate regulatory scheme.

The targets of the bill are employers who fail to comply with statutory provisions requiring the payment of unemployment and business taxes, along with workers compensation taxes. However, the bill tasks the Commissioner, who traditionally enforces the State's labor laws, with determining whether persons are independent contractors for purposes of these other applicable laws. Indeed, the definition of "independent contractor": to be applied by the Commissioner is found in Chapter 616A, which relates, in part, to the enforcement of the State's industrial insurance policy, not the State's labor laws. This mechanism is awkward. The agencies charged with enforcing these provisions should make the factual determinations as to whether an employer illegally misclassifies an employee for purposes of the statues enforced by those agencies. The cross- enforcement by the Commissioner provided for in this bill makes the regulatory picture vague.

NEVADA LEGISLATURE

Seventy-Seventh Session, 2013

SENATE DAILY JOURNAL

THE FIFTY-SEVENTH DAY

CARSON CITY (Monday) April 1, 2013

Senate called to order at 11:18 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer video conferenced from Las Vegas by Mr. Teji Malik, Gurdwara Baba Deep Singh Ji and Guru Nanak Gurdwara congregations, Las Vegas.

Good Morning. *Ik Ong Kaar* means, "There is One Source of all." We are all surrounded by its wow and awe factors.

I am a Sikh, which means a student and a learner, just like you all who are gathered at the Senate to fulfill important duties which affect all Nevadans including myself.

Guru Granth, the Sikh scripture, says: "Amongst all is the Light—You are that Light. This Light is radiant within all that are present" here at the Senate.

Oh, The One Source of All! We are gathered here today in Your omnipresence for the opening of the Senate after the Easter break and we all know the significance of Easter in our hearts. Lord, your presence is in all, irrespective of our hue, creed or faith. You are the Center and we all come to You by many paths, to seek Your help so that You can breed goodness in us which we can share with others.

Please make our shoulders stronger so that we can offer them to those who need them to lean on. Breed acceptance in us so that we can see You in all. Make us the flowers of Your garden so that we can emit the fragrance in all directions.

As a Sikh, I am taught to see the divine in all and it is my duty to fight for equality and justice for all, no matter what religion one may belong to. Lord, our only goal and mission as humans in this Senate is to see the ONE in all. Oh Lord! Help us in fighting against injustice and for equality in this Session.

Now the question arises, how can we have the courage to fight for equality and against injustice? Let me close by saying what the *Guru Granth* says: "I have no animosity against anyone, I see no one as a stranger."

Thank you for the Honor.

Pledge of Allegiance to the Flag.

The President announced that under previous order, the reading of the Journal is waived for the remainder of the 77th Legislative Session and the President and Secretary are authorized to make any necessary corrections and additions.

Senate Bill No. 233.

Bill read third time.

Remarks by Senator Cegavske.

Thank you, Mr. President. Senate Bill No. 233 repeals certain sections of *Nevada Revised Statutes* that direct the governing bodies of certain counties and cities to establish a minimum distance between residential establishments, which include halfway houses for recovering alcohol and drug abusers and residential facilities for groups. In addition, the measure repeals the establishment of a registry of group homes and various related provisions. I appreciate this Body's support.

Roll call on Senate Bill No. 233:

YEAS—21.

NAYS—None.

Senate Bill No. 233 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Bill No. 285.

Bill read third time.

Remarks by Senator Hardy.

Thank you, Mr. President. Senate Bill No. 285, in short, holds all flight-for-life companies to Nevada's safety standards when caring for the people they transport.

Roll call on Senate Bill No. 285:

YEAS—21.

NAYS—None.

Senate Bill No. 285 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Joint Resolution No. 15 of the 76th Legislative Session.

Bill read third time.

Remarks by Senators Kihuen, Denis, Goicoechea, Gustavson, Cegavske, and Settelmeyer.

SENATOR KIHUEN:

Thank you, Mr. President. I rise in support of Senate Joint Resolution No. 15 of the 76th Legislative Session. The resolution proposes to amend Article 10, Section 1, of the *Nevada Constitution* to repeal the prohibition establishing a separate tax rate and providing for assessing and dispersing the tax on the net proceeds of mines. This amendment to the *Nevada Constitution* would allow the Nevada Legislature to determine both the taxation of the net proceeds of mines and the distribution of those taxes. Pursuant to Article 16, Section 1, of the *Nevada Constitution*, and Chapter 218(D) of *Nevada Revised Statutes*, the prohibitions contained within Senate Joint Resolution No. 15 of the 76th Session, the resolution must be approved by the Legislature during the 2011 and 2013 Sessions, followed by voter approval at the 2014 general election, or a special election, in order to be ratified.

Mr. President, I would like to commend my colleagues from the Senate Committee on Revenue and Economic Development for their diligence and hard work on Senate Joint Resolution No. 15 of the 76th Session. As an elected Body, we are expected to come to Carson

City and work in a bipartisan manner and that's exactly what the committee did. We had differences but at the end, this bill was passed unanimously out of committee.

The resolution is the right thing for the State of Nevada and for our constituents. I urge your support. Thank you.

SENATOR DENIS:

Thank you, Mr. President. I rise in support of Senate Joint Resolution No. 15 of the 76th Legislative Session. Senate Joint Resolution No. 15 of the 76th Session repeals the Constitutional prohibition to change the way the mining industry is taxed in our State. If passed, this measure will go before the voters on the 2014 ballot; it must be passed there in order to take effect.

This bill neither increases nor decreases taxes on mining, it simply gives the Nevada Legislature the authority to change the way mining is taxed. With the passage of Senate Joint Resolution No. 15 of the 76th Session, we will be able to fully examine the tax structure of this State and make changes that are fair to all industries. It is time to take another look at the tax structure of this State as a whole and this legislation gives us the opportunity to do that. Thank you.

SENATOR GOICOECHEA:

Thank you, Mr. President. I rise in opposition to Senate Joint Resolution No. 15 of the 76th Legislative Session. I was in this building in 1987 and 1989—not as a legislator, but as a county elected official—lobbying for the passage of Senate Joint Resolution No. 22 of the 64th Session. When it was passed during Special Session on May 2, 1989, only one law maker voted against Senate Joint Resolution No. 22 of the 64th Session. The item said, "Shall the *Nevada Constitution* be amended to allow the taxation of minerals at a rate different than that of other properties?" The argument for passage was the proposed amendment would allow the Legislature to tax the net proceeds of mines at a different rate than other property up to the Constitutional five percent.

Senate Joint Resolution No. 15 of the 76th Session puts that tax increase in jeopardy. When we remove that exemption—when we take it out of the Nevada Constitution—we return to what we had pre-1989 passage of Senate Joint Resolution No. 22 of the 64th Session. The Constitution does say the tax will be fair and equal.

I am very concerned about taking this Constitutional amendment out and the potential long-term ramifications. I urge your opposition. Thank you.

SENATOR GUSTAVSON:

Thank you, Mr. President. I stand in opposition to Senate Joint Resolution No. 15 of the 76th Legislative Session. Exploration companies and their investors are watching what happens here in Nevada. Midway Mine is sitting on a project that would bring 300 more jobs to Nevada. Their backers are growing uncomfortable with the political environment in Nevada and will not finance Midway Mine until they see what happens during this Legislative Session.

We need to remember that 96 percent of the gold mines in the world are outside of Nevada. Nevada has spent millions of dollars of economic development funds to bring new companies here. The Brookings Institution's study targeted the mining industry's potential to move more operations to Nevada. It does not make sense that on one hand we entice mining to come to Nevada, while on the other hand we create an uncertain and unpredictable tax environment.

I urge a no vote on Senate Joint Resolution No. 15 of the 76th Legislative Session. Thank you.

SENATOR CEGAVSKE:

Thank you, Mr. President. After 17 years of service in the Nevada Legislature, I have benefitted from the hindsight and foresight of my time here. It is this experience and vision that tells me not to support Senate Joint Resolution No. 15 of the 76th Legislative Session for the second time.

I want to reflect for a moment on how we might view this vote today if we considered it from a different economic position. As a State, we are still in the midst of an economic recovery and

we are not yet recovered. We know that in order to provide a healthy, nimble and resistant economy for the future, we must diversify. For a moment, imagine the mining industry has not opened operations in Nevada yet and we want to attract the mining industry to this State—just as we hope to attract eight other industries to Nevada in an effort to bring new jobs, new tax revenue and new hope for working families in the future.

What would we offer Barrick Mining North America to move their corporate offices and mining operations to Nevada? They would assist Nevada in mining its 31.5 million ounces of gold, copper and other natural resources. They would create 10,700 direct mining jobs, 14,300 indirect jobs and they would pay an average salary of $87,900.

What would we offer them in the way of tax incentives? Would we streamline their licensing process? What would they ask for to begin operating as a mining company in rural Nevada where economic development is just as important as in our cities?

Would we give them the same deal as we gave Apple to come to Reno and build an iCloud center? Were we excited to have Apple come to Nevada? Yes. We realize the importance of establishing an information and technology business base. We enticed Apple with $89 million in tax credits and an 85 percent reduction in property tax for 10 to 30 years. Apple's effective tax rate is expected to be less than one percent. We agreed to these tax credits and trade for 580 construction jobs, 35 full time employees at an average annual wage of $57,000 and $1 million per year in investments.

What would we do for a company that could come to our State and allow us to produce 47 percent of the world's production in gold? Ask yourself this because there are other companies like Apple and Barrick Mining North America.

As Nevadans, we need to attract businesses to our State in order to develop our new economy and create an economic climate that will be resilient when the next economic downturn occurs. We all know that hard times will come again. Voting to decrease the business-friendly climate in Nevada, and sending the message by targeting a single industry, shows no foresight and will haunt us in hindsight. Thank you.

SENATOR SETTELMEYER:

Thank you, Mr. President. I rise in opposition to Senate Joint Resolution No. 15 of the 76th Legislative Session. I opposed it in the 2011 Session and I maintain my concerns about it. There are mining operations and developments in my district. Just like any type of business, mining companies need consistency in the tax rules.

Many focus on one mineral during the discussion—gold. Mining in this State includes gold, silver, gypsum, diatomite, lime, clay, copper, salt and more. We also have geothermal resources and other renewable energy sources which fall under this category. There are seven renewable energy fields operating in my district and many more that have planned exploration. We could put that all in jeopardy.

If the goal of passing Senate Joint Resolution No. 15 of the 76th Session is to generate more tax dollars, it makes no sense to me to undo a guaranteed stream of revenue. I do not want to do more harm than good. We could look at exemptions to generate more funds; but we are not doing that.

Some say Senate Joint Resolution No. 15 of the 76th Session will generate less revenue, like myself, and others say it will increase revenue. One thing is for certain: passage of Senate Joint Resolution No. 15 of the 76th Session will create uncertainty about the taxing environment, creating a negative impact on the investments of a valuable industry to our State.

For these reasons, I remain opposed to Senate Joint Resolution No. 15 of the 76th Session. Thank you.

Roll call on Senate Joint Resolution No. 15 of the 76th Legislative Session:

YEAS—17.

NAYS—Cegavske, Goicoechea, Gustavson, Settelmeyer—4.

Senate Joint Resolution No. 15 of the 76th Legislative Session having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Joint Resolution No. 9.

Bill read third time.

Remarks by Senator Jones.

Thank you, Mr. President. Outdoor recreation in Nevada generates nearly $15 billion in annual consumer spending, $4.8 billion in wages and salaries and $1 billion in State and local tax revenues. Outdoor recreation events such as the Triathlon World Championships, Ragnar Spartan and Tough Mudder races are flocking to Nevada. Outdoor recreation outfitters want to serve tourist interests in biking, hiking and engaging in other activities on our bountiful federal lands. Bureau of Land Management processes for approving special recreation permits are too slow with a minimum six month wait.

Senate Joint Resolution No. 9 expresses the Nevada Legislature's desire to see the Bureau of Land Management expedite the process for approving special recreation permits. I believe that doing so will create additional jobs and generate additional State and local tax revenue for Nevada and particularly for outdoor recreation programs and events.

Senate Joint Resolution No. 9 passed out of the Senate Committee on Natural Resources unanimously and I urge your support of it.

Roll call on Senate Joint Resolution No. 9:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 9 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Joint Resolution No. 12.

Bill read third time.

Remarks by Senators Brower and Spearman.

SENATOR BROWER:

Good morning, Mr. President; thank you very much. Senate Joint Resolution No. 12 urges the President of the United States to grant a posthumous pardon to John A. "Jack" Johnson. Johnson, the first African American Heavyweight Champion of the World, famously defended his title on July 4, 1910, in Reno, in what became known as the "Fight of the Century" and in front of a crowd of more than 20,000 spectators—keep in mind Reno's population at the time was only about 17,000 people. Johnson defeated Jim "The Great White Hope" Jefferies. This victory boosted Johnson's fame the world over, but also made him a target for those who objected to his flamboyant and controversial lifestyle.

In 1912 Johnson was indicted by a federal grand jury in Chicago for violating the Mann Act, which was ostensibly intended to prohibit "white slavery" but which was used to prosecute Johnson because of his relationships with white women. Johnson was convicted by an all-white jury and was sentenced to one year in prison. It is now generally acknowledged that Jack Johnson's prosecution was racially motivated and should never have happened. Johnson was a man before his time, a legend whose career was tragically cut short and tarnished because of an unjust prosecution. It is time that his wrongful conviction be expunged. Because of our State's special connection to the legend of Jack Johnson, the Nevada Legislature should be the first in the Country to urge President Obama to issue a pardon.

NEVADA LEGISLATURE

Seventy-Seventh Session, 2013

ASSEMBLY DAILY JOURNAL

THE ONE HUNDRED AND NINTH DAY

CARSON CITY (Thursday), May 23, 2013

Assembly called to order at 12:28 p.m.

Madam Speaker presiding.

Roll called.

All present except Assemblywoman Pierce, who was excused.

Prayer by the Chaplain, Pastor Albert Tilstra, Seventh-Day Adventist Church, Fallon, Nevada.

As children bring their broken toys for us to mend, we bring our broken dreams to You, O' God, and then complain as to why You could be so slow; to which You reply, "How could I work? You never did let go."

Help us to remember Your words to us, "They that wait upon the Lord will renew their strength. They will soar on the wings like eagles. They will run and not get weary; they will walk and not faint."

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Horne moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Horne moved that Senate Bills Nos. 220, 262, 267, 315, 321, 441, 456, and 496 be taken from their positions on the General File and placed at the bottom of the General File.

Motion carried.

Assemblyman Horne moved that Assembly Bill No. 466 and Senate Bill No. 319 be taken from the Chief Clerk's desk and placed at the top of the General File.

Motion carried.

I am voting yes today to allow my constituents the opportunity to go to the polls and let their voices be heard. I would ask each of you to demonstrate your leadership by also voting yes on S.J.R. 13. Loving couples of Nevada deserve the right to have their voices heard. Madam Speaker, thank you very much, and thank you to the body.

Roll call on Senate Joint Resolution No. 13:

YEAS—27.

NAYS—Paul Anderson, Duncan, Ellison, Grady, Hambrick, Hansen, Hardy, Hickey, Kirner, Livermore, Oscarson, Stewart, Wheeler, Woodbury—14.

EXCUSED—Pierce.

Senate Joint Resolution No. 13 having received a constitutional majority, Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Senate Joint Resolution No. 15 of the 76th Session.

Resolution read third time.

Remarks by Assemblymen Bustamante Adams, Ellison, Wheeler, Daly, and Livermore.

ASSEMBLYWOMAN BUSTAMANTE ADAMS:

Senate Joint Resolution 15 of the 76th Session proposes to amend Article 10, Section 1 of the Nevada Constitution, which provides for uniform and equal rates of assessment on taxation, to remove the exception to this provision provided for mines and mining claims which, under current law, shall be assessed and taxed only as provided in Article 10, Section 5 of the Constitution.

Additionally, Senate Joint Resolution 15 of the 76th Session proposes to repeal Article 10, Section 5 of the Constitution. This section allows the Legislature to impose a tax on the net proceeds of minerals at a maximum rate of 5 percent, prohibits the imposition of any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost, provides for the distribution of this tax revenue among local governments and school districts, and provides for an exemption from property taxes for patented mines and mining claims where at least $100 worth of labor has been performed.

Pursuant to Article 16, Section 1 of the Nevada Constitution and Chapter 218D of the Nevada Revised Statutes, the provisions contained within this joint resolution must be approved by the Legislature during the 2011 and 2013 Sessions, followed by voter approval at the November 4, 2014, General Election, in order to be ratified.

Thank you, Madam Speaker. I am happy to make these comments on behalf of my colleague from District 3 who couldn't be here today. I know that she is watching from home, and we all pray for a speedy recovery on your behalf. During the Taxation Committee, we had a very healthy and respectful discussion about this topic, and we acknowledged the history and the contribution made by this industry to this state. For this reason, we believe that the removal of the mining constitutional tax exemption should be determined by the voters.

ASSEMBLYMAN ELLISON:

Thank you, Madam Speaker. I rise in opposition to Senate Joint Resolution 15. In previous sessions, we have approved millions of dollars in tax incentive programs to entice new businesses to come to Nevada in the hopes of bringing more companies and higher paying jobs to Nevada. We have invested millions in economic development programs to show what a friendly business environment our state has along with a strong stable infrastructure and no corporate taxes. We have focused more on enticing new businesses and we have forgotten those that helped us here. Nevada has been a mining state from the very beginning It has helped us build our cities, towns, highways, and most of our basic infrastructure. Today, mining employs

over 25,000 Nevadans at an average salary of $88,000 per year. This is well over double the average salary in Nevada. Mining also provides health care, pension plans, education assistance, and scholarship opportunities.

Nevada mines also contributed over $417 million in taxes in 2011 and projections are substantially higher for 2012. Mining is also one of the most stable taxes based in Nevada. The renewed interest in S.J.R. 15 and with declining world gold prices in the last two months, we have already felt the impact in our state. One company alone has already laid off 125 employees and cancelled one new building expansion.

Just this one bill has the power to close many of the small ore mines around Nevada and adversely change the way mining is done forever. Every county in the state has some type of mining, Clark to Elko.

My colleagues, I stand before you today and I ask you to please reconsider the impact this one bill can have on our state and our economy. Please don't vote to change our constitution at the cost of hundreds of high paying jobs. Are we willing to gamble on Nevada's future? Please vote no on S.J.R. 15.

ASSEMBLYMAN WHEELER:

I, too, rise in opposition to Senate Joint Resolution 15 today, Madam Speaker. Senate Joint Resolution 15 introduces an unstable element into our state's economy—into our budget and into the mining sector itself. Realistically, we do not know what the tax structure of this state looks like without the provisions and guarantees currently in our constitution. We have the opinions of a lot of lawyers, but as you all know, ask three different lawyers, and you're going to get three different answers.

Nevada should move in the direction of more stability, not less in relation to mining—more stability in our budget through responsible spending and more stability in our tax structure. All business involves risk. There is no getting around that. But since when is it government's job to increase that risk and to introduce more instability into the marketplace? It is not. But that's exactly what S.J.R. 15 does.

Passing S.J.R. 15 and creating this instability in our marketplace will not create one job in Nevada. It will not encourage any business to come here. It will not reduce one class size in Clark County. It will not restore equity to the University funding formula, and it will not make anyone pay their fair share.

Instead, it just brings more doubt into Nevada's tax structure, it brings doubt to the investors who have billions of dollars at risk in ventures in this state, it brings pain to our rural communities whose schools and services we'll have to scale back, and it slows our economic development and our economic recovery in this state.

In actuality, S.J.R. 15 removes the state's guarantee of $417 million in taxes from the mining industry. This is a bad bill, it is bad policy, and it is bad for the people of Nevada. I hope you will join me in voting no on S.J.R. 15.

ASSEMBLYMAN DALY:

Thank you, Madam Speaker. I rise in support of Senate Joint Resolution 15. To acknowledge the words of my friends from Assembly District 33 and Gardnerville, mining is an important industry in this state. It has been a long part of our history, since before we actually became a state when we were a territory. But along with many other things in this state which have modernized—and we have grown up, mining has modernized—our constitution and the provisions that are in there have not kept up. We're not going to lose mining jobs or mining industry or anything else. The minerals are here, the resource is here, and if there is a market for those resources, mining will continue. They are not going to tunnel in from Utah. So I think it is time that we modernize our constitution and catch up with other states that have passed laws where their revenue has increased and mining has stayed the same—Alaska, Colorado, and other places. I do support Senate Joint Resolution 15 to modernize our constitution with the rest of the industry that has come into the state through mining.

ASSEMBLYMAN LIVERMORE:

I rise in opposition of Senate Joint Resolution 15. Supporters of this resolution are eager to raise taxes on the mining industry. We have seen this time and time again. Meanwhile, sales of all commodities are down since the start of the legislative session. Gold has dropped 20 percent; silver is down more than 30 percent; copper has dropped 11 percent. Major mining companies have stopped hiring Nevada workers. There have been numerous layoffs in the industry, and if the economy doesn't improve for these industries, there will be more.

If it were any other industry, we would not be having this conversation in a time of crisis. Instead, we would be asking how to support that industry. We would vote to incentivize to help make struggling businesses succeed. But since it's mining, we are doing the opposite. There are some in this body who think it is the right thing to do politically, so here we are, voting on a measure specifically designed to hurt an industry.

Many of you know I used to own the A & W franchise in this area. I can only imagine what would happen in this building had root beer ever fallen out of favor with the public. Would we have complained, then, that international soft drink companies weren't paying their fair share? Perhaps we would have considered special taxes on french fries?

My colleagues, we all know how this vote may come out today. But before the rolls are open, I would ask you to consider the problems we will unleash on one of the state's founding industries, on our rural communities, and potentially even on our own budget. Please consider all of these things and join me in voting no on S.J.R. 15.

Roll call on Senate Joint Resolution No. 15 of the 76th Session:

YEAS—26.

NAYS—Paul Anderson, Duncan, Ellison, Fiore, Grady, Hambrick, Hansen, Hardy, Hickey, Kirner, Livermore, Oscarson, Stewart, Wheeler, Woodbury—15.

EXCUSED—Pierce.

Senate Joint Resolution No. 15 of the 76th Session having received a constitutional majority, Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Senate Bill No. 459.

Bill read third time.

Remarks by Madam Speaker.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

This is an expenditure of $47. million appropriated from the State General Fund authorized to be part of our budget.

Roll call on Senate Bill No. 459:

YEAS—41.

NAYS—None.

EXCUSED—Pierce.

Senate Bill No. 459 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 460.

Bill read third time.

Remarks by Assemblywoman Carlton.

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT