NEVADA LEGISLATURE

Thirty-first Special Session, 2020

SENATE DAILY JOURNAL

THE EIGHTH DAY

CARSON CITY (Wednesday), July 15, 2020

Senate called to order at 6:19 p.m.

President Marshall presiding.

Roll called.

All present.

Prayer by Senator Marcia Washington.

Dear Lord, we thank You for waking us up this morning, giving us our mind, body and soul. We ask You to continue to bless our Legislators and staff. We ask You to continue to bless our first responders: the doctors, the nurses, the policemen, the firemen. We ask You to keep them covered with Your blood, Lord Jesus.

We ask for a special healing for our Nation. We have a COVID virus running rampant throughout our State, in our Nation and all over the world. Only You can heal our Nation, Lord Jesus.

We pray and ask for these prayers in Your Name. We praise and thank You for all of Your blessings.

AMEN.

Pledge of Allegiance to the Flag.

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

MESSAGES FROM ASSEMBLY

ASSEMBLY CHAMBER, Carson City, July 14, 2020

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 4.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that the following persons be accepted as accredited press representatives, and that they be allowed the use of appropriate media facilities: KOLO-TV: Michael Cooper, Terri Russell.

Motion carried.

Senator Cannizzaro moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 3 and other matters relating to the State's budget shortfall, with Senator Cannizzaro as Chair and Senator Ratti as Vice Chair.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 6:25 p.m.

Senator Cannizzaro presiding.

Senate Bill No. 3 and other matters relating to the State's budget shortfall considered.

The Committee of the Whole was addressed by Russell Guindon, Principal Deputy Analyst, Fiscal Analysis Division, Legislative Counsel Bureau; Senator Pickard; Senator Seevers Gansert; Mark Krmpotic, Principal Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau; Senator Settelmeyer; Senator Kieckhefer; Senator Harris; Senator Scheible; Melanie Young, Executive Director, Nevada State Department of Taxation; Felicia Denney, Assistant Director, Nevada Department of Transportation; Senator Hansen; Michael Guff; Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada.

SENATOR CANNIZZARO:
We will open the hearing on Senate Bill No. 3.

RUSSELL GUINDON (Principal Deputy Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

Senate Bill No. 3 amends the timing by which the Net Proceeds of Minerals (NPM) tax, currently paid by mining operations in the current fiscal year based on actual mining activity in the previous calendar year, is remitted to the Department of Taxation (DOT). The bill amends Chapter 362 of the NRS to require an estimated payment in the current fiscal year on mining activity in the current calendar year for calendar years 2021, 2022 and 2023. There are provisions allowing for the mining operation to true-up their estimated payments as actual mining activity known to avoid a penalty. These provisions revert to require taxes be paid based on actual mining activity in the preceding calendar year beginning with the payment for calendar year 2024 that will be made in Fiscal Year 2025.

Senate Bill No. 3, if enacted, will require mining companies to make an estimated payment in Fiscal Year 2021 based on their estimated mining activity for calendar year 2021, in addition to the tax payment based on actual mining activity for calendar year 2020 that is required to be paid in Fiscal Year 2021 under current law. These provisions in Senate Bill No. 3 relating to the NPM tax are similar to those enacted by the Legislature in Senate Bill 2 of the 25th Special Session. That bill changed the timing of the payment of this tax beginning in Fiscal Year 2009 for calendar year 2009. This was a Special Session held in 2008 just for this purpose.

Senate Bill No. 3 also amends the distribution of the increased portion of the Government Services Tax (GST) that resulted from the passage of Senate Bill 429 of the 75th Session for Fiscal Year 2021. Under Senate Bill No. 3, 50 percent of these proceeds will deposit into the State General Fund and 50 percent will deposit into the State Highway Fund for Fiscal Year 2021 only, rather than the current distribution of 25 percent to the State General Fund and 75 percent to the State Highway Fund.

Senate Bill No. 3 requires DOT to establish and conduct an amnesty program by which taxpayers may pay any fee, tax or assessment required to be paid to DOT without incurring any penalties or interest that would otherwise be required because of the unpaid fee, tax or assessment. The DOT is to conduct this program for a period of not more than 90 calendar days and must conclude no later than June 30, 2021.

Based on information provided to the Fiscal Analysis Division, DOT and the Department of Motor Vehicles (DMV) have indicated that any financial impacts relating to the change in the payment timing of the NPM tax and the change to the distribution of the GST can be absorbed by the respective agencies. The Department of Transportation additionally indicated the transfer of a portion of GST revenue from the State Highway Fund to the State General Fund in Fiscal Year 2021 would have no impact upon any projects the Department would be undertaking.

There are two proposed amendments to Senate Bill No. 3. The first, changes the prepayment provisions for the NPM tax to require only the tax portion that would be deposited in the State General Fund be paid by mining operators for calendar years 2021, 2022 and 2023 based on estimated mining activity in each of those calendar years. Under this proposed amendment, all of other portions of the tax, including the tax rates for local governments, school districts and the State debt rate, would continue to be paid based on actual mining activity in the previous calendar year as required under current law. This proposed amendment to the NPM tax would only require the additional payment, based on the estimated net proceeds, would be applicable to that portion of the tax that comes from the portion of the tax rate for the General Fund portion. The other portions are related to the Combined Property Tax rate, have no impact, and would be left harmless. They would continue to be administered, paid and distributed based on current law.

This amends the provisions of the bill that currently change the distribution of the increment, for Fiscal Year 2021 only, of the GST that resulted from the passage of Senate Bill 429 of the 75th Session. It further changes the distribution of these proceeds such that 100 percent of the increment will deposit into the State General Fund in Fiscal Year 2021, and the State Highway Fund would receive no portion of this increment. This is for Fiscal Year 2021 only.

We are only now itemizing the General Fund portion of the NPM. The proposed amendment would not affect the consensus estimate for the additional NPM, General Fund tax payment in 2021 of approximately $54.5 million. The Department of Transportation, the Budget Office and the Fiscal Analysis Division prepared this estimate.

The additional 50 percent, estimated at $47.6 million, transferred from GST into the General Fund for the Fiscal Year 2021 only. This is based on a consensus estimate from the Budget Office and the Fiscal Analysis Division. The 25-percent portion is approximately $23.8 million and is not based on DMV's estimate in their fiscal note of $21.4 million.

Additional work on the amnesty program has been done by the Fiscal Department working with DOT, based on information they provided to us. After analyzing accounts receivable and age cohorts, and working with DOT, the revised consensus by DOT, the Budget Office and the Fiscal Analysis Division staff is now $21 million for Fiscal Year 2021, not the $10 million presented to you when the bill was earlier heard this week. Of that $21 million, approximately $14 million is expected to come from General Fund revenue sources. The other $7 million comes from the Local School Support Tax (LSST). When we reviewed the amnesty programs from 2008 and 2001, it appeared we did not explicitly account for the potential impact of additional LSST. It makes sense to include that amount as under the Nevada Plan, with everything else the same, additional LSST provides the General Fund offset and acts as a revenue benefit. It is practicable to include that part of the LSST in the amnesty estimate. That is how we arrived at the $21 million as the revised estimate for the Fiscal Year 2021 amnesty program.

SENATOR PICKARD:

You talk about mining companies making an estimated tax estimate based on their 2021 mining activity, but that is also a function of the price of the mined material. Does this allow for a good-faith estimate of the value of the mined product, or will the expectation be strictly a carryover of whatever was paid in 2020-2021?

MR. GUINDON:

The mine is required to file a report on March 1 wherein they would report their estimate of gross and net proceeds. Out of that would come the estimated tax payment due to the General Fund determined by walking those gross and net proceeds through the tax-rate calculation provisions in statute. This is based on their good-faith estimate. They are allowed to do quarterly true-ups to get within 90 percent of the actual and not incur the 10-percent penalty when they do the annual true-up a year later when they file their February return for the preceding calendar year.

SENATOR PICKARD:

Given the volatility of the marketplace, is there room to maneuver? If they are off by 11 percent, for example, would they have a $3,000 penalty regardless?

MR. GUINDON:

That would be up to DOT to determine in working with the taxpayer. Under the provisions in the bill, they can make quarterly true-ups all the way through the end of December. By then, they should be close to knowing the actual amounts for the calendar year and come close to that 90-percent amount. It they do not, they will have to take it up with DOT. A 10-percent penalty can be imposed by DOT for those who do not pay the correct amount of taxes and is discovered after the fact. This mirrors that for these estimated tax payments and allows quarterly true-ups through the end of the calendar year.

SENATOR SEEVERS GANSERT:

Will the number of GST be $71.4 million if 100 percent goes to the General Fund?

MR. GUINDON:

It would be multiplying it times two, the $47.4 million I stated earlier. The total amount of General Fund would be that … (unintelligible statement) … but the delta would be $47.6 million plus the $23.8 million as would be the amount for the additional 75 percent.

SENATOR SEEVERS GANSERT:

Will any CARES Act money go to the Highway Fund? Do you know the savings from furloughs and the hiring freeze?

MARK KRMPOTIC (Principal Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

The Governor's Finance Office has identified reimbursements to Highway Fund agencies, primarily the Highway Patrol as a public-safety agency, the DMV and the Department of Transportation, to receive CARES Act funds to reimburse agencies when employees were placed on administrative leave when operations shut down. Over the biennium, that totals approximately $38 million.

Based on furlough estimates required for employees of the Department of Transportation, DMV and the Highway Patrol, leaves are estimated at $9.2 million for Fiscal Year 2021 only. The Legislature is considering reducing General Funds for a technology project that has a Highway Fund component to reflect the benefit the project will have towards Highway Funded and General Funded agencies. This is an additional $5.3 million. The freeze amount is approximately $4 million. This further amount that would benefit the Highway Fund when implemented in Fiscal Year 2021.

SENATOR SEEVERS GANSERT:

While we are redistributing $71.4 million, that amounts to $56.5 million going to the Highway Fund. Is that correct?

MR. KRMPOTIC:

The original estimate from the Governor split GST equally at 50 percent between the Highway Fund and the General Fund. That was a $23.8 million swing from the Highway Fund to the General Fund. Administration felt the transfer could be made at that level without harming the Highway Fund. Its staff analyzed the impact of transferring the remaining 50 percent from Highway Fund to the General Fund in the amount of $47.6 million. The amounts I just specified would more than address the remaining 50 percent going to the General Fund.

SENATOR SEEVERS GANSERT:

There was testimony the original $23.8 million would hold the Department of Public Services and the DMV harmless and would not delay projects. Even though we are adding $47.6 million to the General Fund through the CARES Act, furloughs, the technology project and the merit freeze, we will be surpassing that delta; $56 million versus the $47.6 million. This will have a minimal effect on the Highway Fund, if any. It sounds like a big number, but when netted out, it

becomes *de minimus*. A budget over $1.4 billion was passed in Fiscal Year 2019 for the Highway Fund.

SENATOR SETTELMEYER:
A start-up, nonprecious mineral mine, in something like copper or geothermal, could estimate zero dollars, and then true-up each quarter or at the end of the year. Is that correct?

MR. GUINDON:
That is correct. They could estimate zero on the March return because they are figuring things out. In the three, remaining quarterly true-ups, especially the one in December, they could then produce a true-up and pay quarterly. That way they do not have to incur the 10-percent penalty.

We are targeting the General Fund, and geothermal does not pay to the General Fund. They only pay the combined property tax rate. This bill will not affect an upstart geothermal because they do not pay the General Fund portion.

SENATOR KIECKHEFER:
As we make the changes proposed by the amendments in the bill, the total benefit from these transfers to the State General Fund will be $146.9 million, which is $58.6 above what was in the original bill. Is that correct?

MR. GUINDON:
I have not done those calculations so I am not sure.

SENATOR KIECKHEFER:
We are adding $11 million to the tax amnesty program, which would be $21 million. We have $71.4 million in GST transfers and the $54.5 in mining. Is that correct?

MR. GUINDON:
Yes, we are adding the $11 million in amnesty and $47.6 million for GST. The delta from the amendment would be the combination of those 2 because 25 percent of GST was already in the bill as introduced. The $58.6 million would be the delta as additional revenue coming from the proposed amendment and from the revised consensus estimate for the amnesty. The bill is a revised analysis, and the amnesty portion was not changed.

SENATOR HARRIS:
I cannot follow the numbers as well as my colleague from Senate District 15. I would like a bottom-line impact to the Highway Fund if we take the actions we are voting on today. This would be in addition to the anticipated allocation of CARES Act dollars.

MR. KRMPOTIC:
The accumulative transfer/additional transfer of GST from the Highway Fund to the General Fund totals approximately $70.1 million. Staff has analyzed terms of the Governor's proposals to reimburse certain agencies related to COVID-19 expenses from the CARES Act. These would include Highway Funded agencies and implemented furlough leave on all agencies, which also picks up these agencies. A merit freeze has also been implemented that will affect all classified positions in State government including those agencies. There is an additional reversion of SMART 21 dollars, a financial and human-relations project with the Governor's Finance Office. This totals approximately $38 million related to CARES Act reimbursement over the biennium in Fiscal Year 2020 and 2021. The value of the furlough leave is approximately $9.2 million. The SMART 21 reversion is approximately $3.2 million, and the merit freeze is approximately $3 million to $4 million. This totals approximately $53 million compared to the $71 million redirected back to the General Fund. This gives a $14 million impact to the Highway Fund based on my math.

SENATOR HARRIS:
These are not easy calculations, and we appreciate the information and the work you have been doing.

SENATOR SCHEIBLE:
In the amendment, there is a provision with an expiration date of June 30, 2021. Does this mean after Fiscal Year 2020-2021, we return to the previous split of 50/50?

MR. GUINDON:
Section 5.5 of the bill gives the effective date as July 1, 2020, and the sunset date of June 30, 2021. That provision, called the first parallel section, is only in place for Fiscal Year 2021. The section involved would become effective again and revert to current law, which is 25-percent General Fund and 75-percent Highway Fund.

SENATOR SCHEIBLE:
That is what I meant instead of 50/50. I was expecting to see, and do not see, any provisions in the Tax Amnesty Program that DOT, as part of their program, actively has to seek out people who owe taxes so they can avail themselves of this tax amnesty program. The point of this is to bring in more revenue. Is that part of the requirement, and I am just missing it?

MR. GUINDON:
They know who is delinquent so they will be notifying people of the program. There are provisions in the bill that require them to let people know on the Internet website.

MELANIE YOUNG (Executive Director, Nevada State Department of Taxation):
The DOT plans to do extensive outreach. A month before the program initiates, we will reach out to our associations, such as the Retailer's Association, Taxpayer's Association and other outreach groups, to reach as many taxpayers as possible.

SENATOR HARRIS:
There are proposals to eliminate 23 positions at DOT. Are you concerned those layoffs may impact the effectiveness of our tax amnesty program?

MS. YOUNG:
The DOT is facing significant cuts with, potentially, the layoff of 21 employees. We have been working with the Governor's Finance Office to address some of these cuts. We have a great team that has always done more with less. We are not anticipating an impact. Some of the things we are working on to implement the amnesty program will be online. If DOT is successful, we must handle this differently than what we did in 2008 and 2010. We are working toward minimal impact.

SENATOR HARRIS:
What might the effect be on any existing projects for the Nevada Department of Transportation if we move forward with this bill?

FELICIA DENNEY (Assistant Director, Nevada Department of Transportation):
We will be able to continue with the projects we currently have planned. The impact of the change here is lower than in the previous version of the bill.

SENATOR HANSEN:
You mentioned geothermal is not part of this. I did not know that. What about sand and gravel operations? What other types of mining are not part of this tax package?

MR. GUINDON:
Going from memory, the only type of mining operation not included is geothermal. They have a provision to pay only the combined property tax rate. All other types of mining would walk themselves through the tax-rate calculation in NRS. Geothermal never has the General Fund rate. Other mining companies may not pay General Fund Net Proceeds Mineral Tax because they pay a rate equal to the combined property tax rate. That will depend on their net-to-gross ratio and their mining activity for a specific calendar year. These do not have an exception from paying a General Fund rate. They might not pay a General Fund rate, but they could, depending on the level of net proceeds they generate in a calendar year.

SENATOR HANSEN:

How many mining companies paid this the last time we did this? I was under the impression that almost anyone who dug a hole in the ground had to pay something. The numbers we heard in our last hearing were 103 producers of primarily precious metals. How many actually paid in 2009 or 2011 when that first big payment window came into play?

MR. GUINDON:

It will vary by year. The DOT puts out the NPM bulletin that lists the taxpayer mining operations, by operation, showing the gross proceeds, net proceeds and taxes due. In this report, you will see some mining operations have deductions that exceed their gross proceeds so they have no net proceeds, thus they would pay no tax that year. Others, because of the tax-rate calculation for the NPM tax, may end up paying the Combined Property Tax rate, but not have a tax rate that requires payment of any General Fund tax. When we look at the tax, most of the gold and silver operators are at the maximum 5-percent rate. When they have positive net proceeds, they are paying at that 5-percent rate and generating General Fund revenue. Gold and silver are generating approximately 96 percent of the General Fund revenue.

I would like to provide an answer to the question previously posed by the Senator from District 16. The amnesty estimate in place under the bill you heard, as introduced, was approximately $88.4 million. Based on the provisions from the additional 50 percent from GST and the revised $11 million for the amnesty, that number would be $147 million under the bill with the proposed revisions. The additional revenue is $58.6 million.

Senator Scheible moved to amend, and do pass as amended Senate Bill No. 3.

Senator Kieckhefer seconded the motion.

Motion carried. Senator Hansen voted no.

SENATOR CANNIZZARO:

We will now open the hearing to public comment.

MICHAEL GUFF:

I implore members of the Legislature to think outside of the box. The solutions presented have only placed the burden on working families, especially those of us who are essential employees working day and night to fight and defeat this pandemic. It came out today that Elon Musk got a $2.4 billion bonus, but you do not ask him for taxes; you do not ask him to pay his fair share. Of that $10.4 billion, $1.3 billion was paid from tax incentives passed by the Nevada Legislature and the Governor's Office of Economic Incentives.

You are balancing education and Medicaid cuts that will result in the layoffs of teachers, nurses, janitors and people who are protecting us every day on the frontlines from this pandemic. You are not funding people on the frontlines when you are letting a billionaire take a $2.4 billion bonus. I implore those of you who are public employees in your day jobs to be the first to sign up to be laid off. Many of you are lawyers and can hang a shingle to start a bankruptcy law firm because if this bill goes the direction it is going, the entire State will go bankrupt. Entire families will go bankrupt, and bankruptcy law will be the future of Nevada. I especially direct that to you, the Senator from District 15, who makes almost $200,000 a year as a public employee but refuses to vote for revenue to keep frontline nurses from losing their jobs. I hope you will all rethink what you are doing. This is not right for Nevada.

CHRISTINE SAUNDERS (Policy Director, Progressive Leadership Alliance of Nevada):

It is unconscionable for our Legislators to make these cuts without seriously considering new sources of revenue. There are many actions, such as removing mining protections, you can take at the State level to prevent these cuts without waiting for the federal government. Now is the moment for you to be bold and set Nevada on the right track for the future. We cannot balance the budget on the backs of those most vulnerable and hit hardest by the economic and health crises we face.

On the motion of Senator Woodhouse, seconded by Senator Parks, the Committee did rise and report back to the Senate.

SENATE IN SESSION

At 7:36 p.m.

President Marshall presiding.

Quorum present.

REPORTS OF COMMITTEE

Madam President:

Your Committee of the Whole, to which was referred Senate Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

NICOLE J. CANNIZZARO, *Chair*

GENERAL FILE AND THIRD READING

Senate Bill No. 3.

Bill read third time.

The following amendment was proposed by the Committee of the Whole:

Amendment No. 1.

SUMMARY—Revises provisions governing governmental financial administration. (BDR 32-10)

AN ACT relating to governmental financial administration; temporarily accelerating the collection of a portion of the tax upon the net proceeds of minerals; temporarily requiring persons who extract minerals to pay a portion of the tax on the net proceeds of the estimated royalties that will be paid for certain years; temporarily altering the allocation of a portion of the proceeds of the basic governmental services tax; requiring the Department of Taxation to allow for the payment of delinquent taxes, fees or assessments without a penalty for a limited period in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the taxation of the net proceeds of minerals based upon the actual net proceeds from the preceding calendar year. (NRS 362.100-362.240) Existing law requires the person extracting any mineral in this State to file a statement which shows the estimated gross yield and estimated net proceeds from each operation for the current calendar year and an estimate of all royalties that will be paid during the current calendar year. (NRS 362.115) Sections ~~[1–5]~~ 2 and 3 of this bill temporarily require advance payment of the portion of the tax that is distributed to the State General Fund, based upon the estimated net proceeds and royalties for the current calendar year. Section 12 of this bill provides that the collection of the tax on net proceeds of minerals reverts back to the former method of collection on actual net proceeds beginning for calendar year 2024. However, because a portion of the tax on the net proceeds of minerals imposed for calendar year 2023 will be paid in advance during fiscal year 2023, section 8 of this bill enacts transitory provisions governing the duties of the Department of

Taxation for fiscal year 2024 . ~~[and the appropriation and apportionment of money to counties and other local governments during that year.]~~

Existing law imposes a basic tax for governmental services for the privilege of operating any vehicle upon the public highways of this State, which is collected by the Department of Motor Vehicles. (NRS 371.030, 482.260) Existing law sets forth depreciation schedules for determining the valuation of a vehicle that is used to calculate the amount of governmental services taxes due each year for used vehicles. (NRS 371.060) Senate Bill No. 429 of the 2009 Legislative Session (S.B. 429) increased the amount of governmental services taxes due annually for used vehicles by reducing the amount of depreciation allowed and increasing the minimum tax. Existing law allocates the revenue from this portion of the governmental services tax, with 25 percent of the proceeds allocated to the State General Fund and 75 percent of the proceeds allocated to the State Highway Fund. (NRS 482.182) ~~[Section]~~ Sections 5.5 and 6 of this bill temporarily ~~[requires]~~ require the Department to direct that ~~[50 percent]~~ the entire amount of these proceeds be transferred to the State General Fund . ~~[and 50 percent to the State Highway Fund.]~~ Sections 9 and 12 of this bill limit this change to governmental services taxes collected for a registration period beginning on or after July 1, 2020, and ending on or before June 30, 2021.

Section 10 of this bill requires the Department of Taxation to establish an amnesty program pursuant to which a person who is delinquent in the payment of a tax, fee or assessment may pay the amount due without any penalty or interest in certain circumstances.

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

Section 1. ~~[NRS 362.110 is hereby amended to read as follows:~~

~~362.110 1. Every person extracting any mineral in this State : [or receiving any royalty:]~~

~~(a) Shall, on or before February 16 of each year, file with the Department a statement showing the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted by that person during the calendar year immediately preceding the year in which the statement is filed.~~

~~(b) May have up to 30 days after filing the statement required by paragraph (a) to file an amended statement.~~

~~2. The statement must:~~

~~(a) Show the claimed deductions from the gross yield in the detail set forth in NRS 362.120. The deductions are limited to the costs incurred during the calendar year immediately preceding the year in which the statement is filed.~~

~~(b) Be in the form prescribed by the Department.~~

~~(c) Be verified by the manager, superintendent, secretary or treasurer of the corporation, or by the owner of the operation, or, if the owner is a natural person, by someone authorized in his or her behalf.~~

~~[3. Each recipient of a royalty as described in subsection 1 shall annually file with the Department a list showing each of the lessees responsible for taxes due in connection with the operation or operations included in the statement filed pursuant to subsections 1 and 2.]~~ (Deleted by amendment.)

Sec. 2. NRS 362.115 is hereby amended to read as follows:

362.115 1. In addition to the statement required by subsection 1 of NRS 362.110, each person extracting any mineral in this State ~~[shall,]~~ *:*

(a) Shall, on or before March 1 of each year, file with the Department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year and an estimate of all royalties that will be paid during the current calendar year ~~[.]~~ *and shall pay a portion of the tax upon the net proceeds and upon the royalties so estimated ~~[.]~~ in an amount equal to the estimated net proceeds and royalties multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada. The estimated payment may be reduced by the amount of any credit to which the taxpayer is entitled pursuant to NRS 362.130.*

The amount of the tax paid upon royalties must be deducted from the payment of the royalties.

(b) May file with the Department a quarterly report stating an estimate for the year and the actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31, and pay any additional amount due. The additional estimated tax liability must be calculated by determining the difference between the revised estimates of net proceeds based on the recent production figures as indicated by the quarterly reports and the original estimate supplied pursuant to paragraph (a). If the person chooses to submit such reports, the reports must be submitted on a form prescribed by the Department not later than the last day of the month following the end of the calendar quarter and payment must be made within 30 days after filing any quarterly report that indicates an additional estimated tax liability.

2. The Department shall:

(a) Use the statement filed pursuant to subsection 1 ~~[only]~~ to prepare estimates for use by local governments in the preparation of their budgets; and

(b) Submit those estimates to the local governments on or before March 15 of each year.

Sec. 3. NRS 362.130 is hereby amended to read as follows:

362.130 1. When the Department determines from the annual statement filed pursuant to NRS 362.110 the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds *, the amount of the estimated tax paid in the prior calendar year pursuant to paragraph (a) of subsection 1 of NRS 362.115 and any additional payments made pursuant to paragraph (b) of subsection 1 of that section,* and the *balance of the* tax due *,*

~~[if any,]~~ and send a copy of the certificate to the owner of the mine, ~~[or]~~ operator of the mine ~~[.]~~ or recipient of the royalty, as the case may be.

2. The certificate must be prepared and mailed not later than:

(a) April 20 immediately following the month of February during which the annual statement was filed; or

(b) April 30 immediately thereafter if an amended statement is filed in a timely manner.

3. The tax due as indicated in the certificate *and any penalty* must be paid on or before May 10 of the year in which the certificate is received.

4. *If the amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115 in the prior calendar year is less than 90 percent of the amount certified pursuant to this section ~~[,]~~ as the net proceeds of any minerals extracted and royalties paid during the prior calendar year multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada, the amount due must include a penalty of 10 percent of the amount by which that portion of the tax was underpaid unless:*

(a) The amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115 in the prior calendar year is equal to or greater than the ~~[total]~~ liability of the operation for the preceding calendar year ~~[,]~~ for the portion of the tax that is equal to the net proceeds of any minerals extracted and royalties paid during that calendar year multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada; or

(b) The person files quarterly reports pursuant to paragraph (b) of subsection 1 of NRS 362.115 in a timely manner for that year and the total of all payments exceeds 90 percent of the amount certified ~~[.]~~ as the net proceeds of any minerals extracted and royalties paid during the prior calendar year multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada.

5. If an overpayment was made ~~[,]~~ *on the payment of the portion of the tax upon the net proceeds and royalties equal to the net proceeds and the royalties multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada,* the overpayment must be credited toward the payment due on ~~[May 10]~~ *March 1* of the next calendar year. *If an overpayment was made on the portion of the tax upon the net proceeds and royalties equal to the net proceeds and the royalties multiplied by the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada, the overpayment must be credited toward the payment*

due on May 10 of the next calendar year. If the certificate shows a net loss for the year covered by the certificate or an amount of tax due for that year which is less than an overpayment made for the preceding year, the amount or remaining amount of the overpayment must, after being credited against any amount then due from the taxpayer in accordance with NRS 360.236, be refunded to the taxpayer within 30 days after the certification was sent to the taxpayer.

Sec. 4. ~~[NRS 362.170 is hereby amended to read as follows:~~

~~362.170 1. There is hereby appropriated to each county the total of the amounts obtained by multiplying, for each extractive operation situated within the county, the net proceeds of that operation and any royalties paid by that operation, *as estimated and paid pursuant to NRS 362.115, plus any amounts paid pursuant to NRS 362.130,* by the combined rate of tax ad valorem [,] *for the fiscal year to which the payments apply,* excluding any rate levied by the State of Nevada, for property at that site, plus a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to the county. The Department shall report to the State Controller on or before May 25 of each year the amount appropriated to each county, as calculated for each operation from the final statement made in February of that year for the preceding calendar year[.] *and the estimate provided pursuant to NRS 362.115 for the current calendar year.* The State Controller shall distribute all money due to a county on or before May 30 of each year. *The Department shall report to the State Controller any additional payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 within 15 days after the date on which the payment must be made pursuant to paragraph (b) of subsection 1 of NRS 362.115, and the State Controller shall distribute the money to the appropriate county within 5 days after receipt of the report from the Department. For the purposes of this subsection, payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 apply to the fiscal year in which the statement of the estimated net proceeds is filed pursuant to paragraph (a) of subsection 1 of NRS 362.115.*~~

~~2. The county treasurer shall apportion to each local government or other local entity an amount calculated by:~~

~~(a) Determining the total of the amounts obtained by multiplying, for each extractive operation situated within its jurisdiction, the net proceeds of that operation and any royalty payments paid by that operation, by the rate levied on behalf of that local government or other local entity;~~

~~(b) Adding to the amount determined pursuant to paragraph (a) a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to that local government or local entity; and~~

~~(c) Subtracting from the amount determined pursuant to paragraph (b) a commission of 5 percent, of which 3 percent must be deposited in the county general fund and 2 percent must be accounted for separately in the account for the acquisition and improvement of technology in the office of the county assessor created pursuant to NRS 250.085.~~

~~3. The amounts apportioned pursuant to subsection 2, including, without limitation, the amount retained by the county and excluding the percentage commission, must be applied to the uses for which each levy was authorized in the same proportion as the rate of each levy bears to the total rate.~~

~~4. The Department shall report to the State Controller on or before May 25 of each year the amount received as tax upon the net proceeds of geothermal resources which equals the product of those net proceeds multiplied by the rate of tax levied ad valorem by the State of Nevada.]~~ (Deleted by amendment.)

Sec. 5. ~~[NRS 362.170 is hereby amended to read as follows:~~

~~362.170 1. There is hereby appropriated to each county the total of the amounts obtained by multiplying, for each extractive operation situated within the county, the net proceeds of that operation and any royalties paid by that operation, *as estimated and paid pursuant to NRS 362.115, plus any amounts paid pursuant to NRS 362.130,* by the combined rate of tax ad valorem [,] *for the fiscal year to which the payments apply,* excluding any rate levied by the State of Nevada, for property at that site, plus a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to the county. The Department shall report to the State Controller on or before May 25 of each year the amount appropriated to each county, as calculated for each operation from the [final statement made in February of that year] *estimate provided pursuant to NRS 362.115 for the current calendar year and any adjustments made pursuant to NRS 362.130* for the preceding calendar year. The State Controller shall distribute all money due to a county on or before May 30 of each year. *The Department shall report to the State Controller any additional payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 within 15 days after the date on which the payment must be made pursuant to paragraph (b) of subsection 1 of NRS 362.115, and the State Controller shall distribute the money to the appropriate county within 5 days after receipt of the report from the Department. For the purposes of this subsection, payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 apply to the fiscal year in which the statement of the estimated net proceeds is filed pursuant to paragraph (a) of subsection 1 of NRS 362.115.*~~

~~2. The county treasurer shall apportion to each local government or other local entity an amount calculated by:~~

~~(a) Determining the total of the amounts obtained by multiplying, for each extractive operation situated within its jurisdiction, the net proceeds of that operation and any royalty payments paid by that operation, by the rate levied on behalf of that local government or other local entity;~~

~~(b) Adding to the amount determined pursuant to paragraph (a) a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to that local government or local entity; and~~

~~(c) Subtracting from the amount determined pursuant to paragraph (b) a commission of 5 percent, of which 3 percent must be deposited in the county~~

~~general fund and 2 percent must be accounted for separately in the account for the acquisition and improvement of technology in the office of the county assessor created pursuant to NRS 250.085.~~

~~3. The amounts apportioned pursuant to subsection 2, including, without limitation, the amount retained by the county and excluding the percentage commission, must be applied to the uses for which each levy was authorized in the same proportion as the rate of each levy bears to the total rate.~~

~~4. Any amount apportioned pursuant to subsection 2 for a county school district for any purpose other than capital projects or debt service for the county school district must be paid over to the State Treasurer to be deposited to the credit of the State Education Fund.~~

~~5. The Department shall report to the State Controller on or before May 25 of each year the amount received as tax upon the net proceeds of geothermal resources which equals the product of those net proceeds multiplied by the rate of tax levied ad valorem by the State of Nevada.]~~ (Deleted by amendment.)

Sec. 5.5. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 5, after deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180, and the amount transferred to the State General Fund ~~[and the State Highway Fund]~~ pursuant to NRS 482.182, the Department shall certify monthly to the State Board of Examiners the amount of the basic and supplemental governmental services taxes collected for each county by the Department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental governmental services tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.043, 371.045 and 371.047.

3. The distribution of the basic governmental services tax received or collected for each county must be made to the county school district within each county before any distribution is made to a local government, special district or enterprise district. For the purpose of calculating the amount of the basic governmental services tax to be distributed to the county school district, the taxes levied by each local government, special district and enterprise district are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. After making the distributions set forth in subsection 3, the remaining money received or collected for each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for distribution to local governments, special districts and enterprise districts within each county pursuant to the provisions of NRS 360.680 and 360.690.

5. An amount equal to any basic governmental services tax distributed to a redevelopment agency in the Fiscal Year 1987-1988 must continue to be distributed to that agency as long as it exists but must not be increased.

6. The Department shall make distributions of the basic governmental services tax directly to county school districts.

7. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Received or collected for each county" means:

(1) For the basic governmental services tax collected on vehicles subject to the provisions of chapter 706 of NRS, the amount determined for each county based on the following percentages:

Carson City	1.07 percent	Lincoln	3.12 percent
Churchill	5.21 percent	Lyon	2.90 percent
Clark	22.54 percent	Mineral	2.40 percent
Douglas	2.52 percent	Nye	4.09 percent
Elko	13.31 percent	Pershing	7.00 percent
Esmeralda	2.52 percent	Storey	0.19 percent
Eureka	3.10 percent	Washoe	12.24 percent
Humboldt	8.25 percent	White Pine	5.66 percent
Lander	3.88 percent		

(2) For all other basic and supplemental governmental services tax received or collected by the Department, the amount attributable to each county based on the county of registration of the vehicle for which the tax was paid.

(d) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 6. NRS 482.182 is hereby amended to read as follows:

482.182 1. After deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180 and before carrying out the provisions of NRS 482.181 each month, the Department shall direct the State Controller to transfer to the ~~[:~~

~~(a)]~~ State General Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month, ~~[25~~ *50* ~~percent of]~~ the amounts indicated pursuant to this section.

~~[(b) State Highway Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month, 75~~ *50* ~~percent of the amounts indicated pursuant to this section.]~~

2. Except as otherwise provided in subsection 3, the amount required to be transferred pursuant to subsection 1 from the proceeds of the basic

governmental services tax imposed on vehicles depreciated in accordance with:

(a) Subsection 1 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 11 percent of those proceeds;

(2) Two years, is a sum equal to 12 percent of those proceeds;

(3) Three years, is a sum equal to 13 percent of those proceeds;

(4) Four years, is a sum equal to 15 percent of those proceeds;

(5) Five years, is a sum equal to 18 percent of those proceeds;

(6) Six years, is a sum equal to 22 percent of those proceeds;

(7) Seven years, is a sum equal to 29 percent of those proceeds;

(8) Eight years, is a sum equal to 40 percent of those proceeds; and

(9) Nine years or more, is a sum equal to 67 percent of those proceeds; and

(b) Subsection 2 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 12 percent of those proceeds;

(2) Two years, is a sum equal to 14 percent of those proceeds;

(3) Three years, is a sum equal to 18 percent of those proceeds;

(4) Four years, is a sum equal to 21 percent of those proceeds;

(5) Five years, is a sum equal to 26 percent of those proceeds;

(6) Six years, is a sum equal to 30 percent of those proceeds;

(7) Seven years, is a sum equal to 33 percent of those proceeds;

(8) Eight years, is a sum equal to 37 percent of those proceeds;

(9) Nine years, is a sum equal to 40 percent of those proceeds; and

(10) Ten years or more, is a sum equal to 43 percent of those proceeds.

3. The amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles to which the minimum amount of that tax applies pursuant to paragraph (b) of subsection 3 of NRS 371.060 is a sum equal to 63 percent of those proceeds.

Sec. 7. ~~[1.]~~ Each person required to pay the tax on the net proceeds of minerals shall pay:

~~[(a)]~~ 1. The tax determined pursuant to NRS 362.130, as that section reads prior to amendment by section 3 of this act, for the calendar year 2020; and

~~[(b)]~~ 2. The estimated tax for the calendar year 2021 pursuant to NRS 362.115, as amended by section 2 of this act.

~~[2. For the calendar year 2021, the amount appropriated to each county pursuant to NRS 362.170 must be determined based upon the sum of:~~

~~(a) The amount paid pursuant to NRS 362.130, as that section reads before amendment by section 3 of this act, based upon the tax paid for the calendar year 2020; and~~

~~(b) The estimated tax for the calendar year 2021 paid pursuant to NRS 362.115, as amended by section 2 of this act.]~~

Sec. 8. 1. When preparing its certificate of the tax due from a taxpayer pursuant to NRS 362.130 during the calendar year 2024, the Department of

Taxation shall reduce the amount of the tax due from the taxpayer by the amount of:

(a) Any estimated payments of the tax made by or on behalf of the taxpayer during the calendar year 2023 pursuant to NRS 362.115, as that section read on January 1, 2023; and

(b) Any unused credit to which the taxpayer may be entitled as a result of any previous overpayment of the tax.

2. Notwithstanding any other provision of ~~[NRS 362.170 to the contrary:~~

~~(a) The amount appropriated to each county pursuant to that section for distribution to the county during the calendar year 2024 must be reduced by the amount appropriated to the county pursuant to that section for distribution to the county during the calendar year 2023, excluding any portion of the amount appropriated to the county pursuant to that section for distribution to the county during the calendar year 2023 which is attributable to a pro rata share of any penalties and interest collected by the Department of Taxation for the late payment of taxes distributed to the county.~~

~~(b) In calculating the amount required to be apportioned to each local government or other local entity pursuant to subsection 2 of that section for the calendar year 2024, the county treasurer shall reduce the amount required to be determined pursuant to paragraph (a) of that subsection for that calendar year by the amount determined pursuant to that paragraph for the calendar year 2023.]~~ law, for the calendar year 2023, each person extracting any mineral in this State may file with the Department a quarterly report stating an estimate for the year and the actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31 of that year, and pay any additional amount of the portion of the tax due pursuant to paragraph (a) of subsection 1 of NRS 362.115, as that section read on January 1, 2023. The additional estimated tax liability must be calculated by determining the difference between the revised estimates of net proceeds based on the recent production figures as indicated by the quarterly reports and the original estimate supplied pursuant to paragraph (a) of subsection 1 of NRS 362.115, as that section read on January 1, 2023. If the person chooses to submit such reports, the reports must be submitted on a form prescribed by the Department not later than the last day of the month following the end of the calendar quarter and payment must be made within 30 days after filing any quarterly report that indicates an additional estimated tax liability.

3. Notwithstanding any other provision of law, for calendar year 2023, if the amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115, as that section read on January 1, 2023, is less than 90 percent of the amount certified pursuant to NRS 362.130 as the net proceeds of any minerals extracted and royalties paid during calendar year 2023 multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada, the certificate prepared by

the Department pursuant to this section must include a penalty of 10 percent of the amount by which that portion of the tax was underpaid unless:

(a) The amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115, as that section read on January 1, 2023, in calendar year 2023 is equal to or greater than the liability of the operation for the calendar year 2022 for the portion of the tax that is equal to the net proceeds of any minerals extracted and royalties paid during that calendar year multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada; or

(b) The person files quarterly reports pursuant to subsection 2 in a timely manner and the total of all payments exceeds 90 percent of the amount certified as the net proceeds of any minerals extracted and royalties paid during the calendar year 2023 multiplied by a rate equal to the rate as determined pursuant to NRS 362.140 minus the combined rate of tax ad valorem for the county in which the operation is located, including any rate levied by the State of Nevada.

Sec. 9. The amendatory provisions of ~~[section]~~ sections 5.5 and 6 of this act apply to any proceeds of the basic governmental services tax collected by the Department of Motor Vehicles and its agents which is attributable to any period of registration of a vehicle that begins on or after July 1, 2020, and ends on or before June 30, 2021.

Sec. 10. 1. Except as otherwise provided in this section and notwithstanding any other provision of law, the Department of Taxation shall establish and conduct a program that complies with the requirements of this section and requires the Department to relieve a person who has not paid a tax, fee or assessment required to be paid to the Department of all the monetary penalties and interest imposed with regard to the unpaid tax, fee or assessment. Upon the establishment of a program pursuant to this section, the Department of Taxation shall provide notice of the program, including, without limitation, the dates during which the program will be conducted and the manner in which a person may request relief pursuant to the program, on the Internet website maintained by the Department.

2. The Department of Taxation shall conduct a program established and conducted pursuant to subsection 1 only for a period of not more than 90 calendar days and only during a period beginning on or after the effective date of this ~~[act]~~ section and ending not later than June 30, 2021.

3. The Department of Taxation shall relieve a person who has not paid a tax, fee or assessment required to be paid to the Department of all the monetary penalties and interest imposed with regard to the unpaid tax, fee or assessment if, on or after the date on which the Department begins conducting the program established and conducted pursuant to subsection 1 and before the ending date of the program, the person:

(a) Requests relief from the Department by the form or method required by the Department; and

(b) Except as otherwise provided in subsection 4, pays the amount of the unpaid tax, fee or assessment in full to the Department.

4. If a person has not paid a tax, fee or assessment required to be paid to the Department of Taxation for multiple periods, files with the Department a request for relief pursuant to paragraph (a) of subsection 3 and pays the amount of the unpaid tax, fee or assessment for less than all of the periods for which the person has not paid the tax, fee or assessment, the Department may grant relief to the person for each period for which the person pays the amount of the tax, fee or assessment in full to the Department.

5. A program established and conducted by the Department of Taxation pursuant to subsection 1:

(a) Must apply only to taxes, fees and assessments that are due and payable before the effective date of this section;

(b) Must not apply to any person who:

(1) Has entered into a compromise or settlement agreement with the Department regarding the unpaid tax, fee or assessment;

(2) Has entered into a compromise with the Nevada Tax Commission regarding the unpaid tax, fee or assessment pursuant to NRS 360.263; or

(3) Is being audited by the Department and has not been issued a final notice of deficiency determination by the Department.

6. A person who requests or receives relief pursuant to this section may be selected for an audit and audited by the Department of Taxation in the same manner as a person who does not request or receive relief pursuant to this section.

Sec. 11. Notwithstanding the provisions of NRS 218D.430, a committee may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after July 8, 2020.

Sec. 12. 1. This section and sections 2 ~~[, 4, 6]~~ and ~~[7]~~ 5.5 to ~~[10,]~~ 11, inclusive, of this act become effective upon passage and approval.

2. Sections ~~[4]~~ 5.5 and 6 of this act expire by limitation on June 30, 2021.

3. ~~[Sections 1,]~~ Section 3 ~~[and 5]~~ of this act ~~[become]~~ becomes effective on July 1, 2021.

4. Sections ~~[1,]~~ 2 ~~[,]~~ and 3 ~~[and 5]~~ of this act expire by limitation on June 30, 2023.

Senator Dondero Loop moved the adoption of the amendment.

Remarks by Senator Dondero Loop.

This amendment changes GST to the General fund instead of the Highway Fund. It exempts the county portion to the prepayment of the mining taxes.

Amendment adopted.

Senator Cannizzaro moved that all necessary rules be suspended, that the reprinting of Senate Bill No. 3 be dispensed with, that the Secretary be authorized to insert Amendment No. 1 adopted by the Senate, and that the bill be placed on the General File and considered next.

Motion carried.

Bill read third time.

Remarks by Senators Dondero Loop, Hansen, Settelmeyer, Pickard, Hardy and Cannizzaro.

SENATOR DONDERO LOOP:

Senate Bill No. 3, in its first reprint, amends the timing by which the General Fund portion of NPM tax is paid by requiring taxpayers to make an estimated payment of this portion of the tax in the current fiscal year for mining activity in the current calendar year for calendar years 2021, 2022 and 2023. Taxpayers will continue to pay the portion of the tax dedicated to local governments, school districts and the State debt rate in the current fiscal year based on actual mining activity in the previous calendar year during this period.

The provisions of the bill require that the payment of all portions of NPM tax be based on the actual mining activity in the preceding calendar year, beginning with the payment for calendar year 2024 that will be made in Fiscal Year 2025.

The bill also amends the distribution of the increased portion of GST that resulted from the passage of Senate Bill No. 429 of the 75th Session, such that 100 percent of these proceeds will be deposited in the State General Fund in Fiscal Year 2021 only, and no proceeds will be deposited in the State Highway Fund.

Senate Bill No. 3 requires DOT to establish and conduct an amnesty program by which taxpayers may pay a fee, tax or assessment required to be paid to DOT without incurring any penalties or interest that would otherwise be required as a result of the unpaid fee, tax or assessment. This program is required to be conducted by DOT for a period of not more than 90 calendar days and must be concluded no later than June 30, 2021.

This section and sections 2, 6 and 7 to 10, inclusive, become effective upon passage and approval. Section 6 of this act expires by limitation on June 30, 2021. Section 3 of this act becomes effective on July 1, 2021. Sections 2 and 3 of this act expire by limitation on June 30, 2023.

SENATOR HANSEN:

I am probably going to be the only "no" vote on this and want to explain why. It is wrong to single out one industry and force them to pay a tax in advance. This violates both the spirit and the letter law in the *Nevada Constitution*, which says taxation in Nevada should be fair and equitable. If we were doing this to several different industries, it would be fine, but we do not do it to gaming or small business. We have singled-out mining. Public comments seem to have mining as their favorite whipping boy. It is true there are large corporations involved in Nevada mining, but the vast majority of them are smaller operations that are not highly profitable.

Mr. Guindon just told us of a report I did not know existed. I looked through it quickly before the hearing, and at least half of the gold and silver producers in Nevada are not making money; they are losing money at the moment. It is true gold prices are high at the moment, but gold is always a reflection of the economy. When the American economy is very high, gold goes way down, and when there is uncertainty, gold goes up. This has always been a hedge against inflation. Even though we have high swings in the price, the ability to produce the gold does not change. It takes years of intense development to develop a mine. The spikes in gold prices do not mean mines can go and mine thousands of more ounces a day. They have mapped this out years in advance. We sometimes have an image in our mind that does not reflect the reality.

Many smaller operators have to borrow money to make these payments. They do not have large capital assets in reserve to tap into, and this reduces their ability to borrow money for normal capital improvements on their projects. This, then, reduces the amount of ore that can be produced and hurts our tax revenue in the long run.

The bigger corporations are taking up more of the mines. One of the reasons for this is the cost of regulations and the cost to build a mine and put in into operation with all of the burden and overhead. From the time the permitting process begins, it typically takes ten years before turning a shovel of dirt; ten years of capital investment before they begin to possibly get back one nickel.

We like to use mining as the whipping boy on all of these things, but for the rural communities, mining is the industry. It is the key and most important industry in most of our rural counties. It is harmful to the rural communities to jeopardize their economic future by doing things that harm

investment into the mining industry itself and create an uncertainty factor that should not exist. They should not be forced to pay taxes a year in advance.

I will be voting "no" on this bill. I am not speaking for the mining industry. I think they would prefer I not say a word about it. They understand they have a public-relations problem in this State. They would rather pay it and act like they are delighted to pay it. The truth is, we have held a gun to their heads and made them the whipping boy when, in fact, they are one of the best industries Nevada has. We are the Silver State after all, and mining has been great for Nevada. It is great for the rural areas. I am disappointed we single out one industry rather than spreading the burden across all industries in our State, as would be proper, fair and equitable. I will be voting "no."

SENATOR SETTELMEYER:

The concept of prepayment by mines is not a new concept. We did this in a Special Session in 2010 during bad economic times under Assembly Bill 6 of the 75th Session. The concept of a prepayment was labeled as a two-thirds majority required bill. This bill is not labeled that way. Was it an error back then to label it as such, or is it an error now to not label it as a two-thirds bill? Nothing has changed in the *Nevada Constitution* on this issue since 2010. I am concerned by the inconsistency. The timing of this, considering the uncertainty of the two-thirds rule, is troubling.

SENATOR PICKARD:

I agree with the merits of this bill. I voted in the affirmative in Committee. I object to the fact that this Body, in 2010, required a two-thirds vote, and now, when litigation on this process is pending, this Body uses this bill to press a record that is legally flawed, ostensibly to support their position in the litigation. Had the majority maintained its fealty to the constitutional requirement for a two-thirds majority, as it did in 2010, this bill would likely have passed with strong bipartisan support. Instead, it is being used to bolster their prior departure from our governing document for partisan purposes.

I do not support the decision to strip the two-thirds majority vote requirement from the bill. I support the merits of the bill, although I fear an affirmative vote will undermine the rule of law in Nevada. I will vote in the affirmative because we need to balance our budget in a reasonable way. I pray this decision does not end up weakening our requirement to adhere to our *Nevada Constitution.*

SENATOR HARDY:

In 2019, during a period of an hour, we voted on a bill as a two-thirds majority, then brought it back and voted on it as a simple majority. In 2010, we voted on a bill similar to this one as a two-thirds majority, and in 2020 we are projecting to be voting on this bill as a simple majority vote. In my disappointed way of looking at this, I am wondering why we do not put this forward today as a two-thirds majority vote. If those votes are not there, we can wait an hour and then vote on it as a majority vote. This would show confidence in being able to repeat history and be able justify it.

SENATOR CANNIZZARO:

All members of the Committee have received an opinion from the Legislative Counsel Bureau's Legal Division that addresses the questions presented to this Body. It is much of the same argument as to whether a two-thirds majority would apply to a particular piece of legislation.

This bill does not change the current, statutory computation basis. It does not change the rate at which the taxes are paid or the amount any operation that pays this type of tax would be paying. It instead changes only the method of collecting the NPM tax. Testimony heard in the Committee of the Whole, and answers to members of the Committee, dealt with how this would apply to their tax burden and how they would allot for adjustments over time. This piece of legislation does not result in a tax increase to the tax being paid. The opinion provided to the Body gives a detailed and lengthy explanation as to why a two-thirds majority is not required for this bill.

Senator Cannizzaro requested that the following legal opinion from the Legislative Counsel Bureau, Legal Division, be entered in the Journal.

LEGAL OPINION

July 13, 2020

NEVADA SENATE, Senate Chambers

DEAR MEMBERS OF THE SENATE:

You have asked this office a legal question relating to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

> [A]n 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, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2).[1]

Your question concerns the collection of the existing state taxes on the net proceeds of all minerals extracted in this State under NRS Chapter 362 (net proceeds tax). Specifically, you have asked whether the two-thirds majority requirement applies to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax.

An example of such a bill is Senate Bill No. 3 (S.B. 3) of the 31st Special Session of the Legislature. With regard to the net proceeds tax, S.B. 3 would, on a temporary basis: (1) require the State to collect from each mining operation, in advance, some of the projected net proceeds tax during a current calendar year based on the estimated gross yield and estimated net proceeds from extraction during the current calendar year and the estimated amount of royalties that will be paid during the current calendar year; and (2) after the end of the current calendar year, when the State makes its final calculation of the actual amount of the net proceeds tax due from the mining operation, require the State to credit any overpayment of the net proceeds tax occurring within that calendar year against the payment of the net proceeds tax by the mining operation for the next calendar year.

In response to your question, we first provide pertinent background information regarding Nevada's constitutional requirements for the final passage of bills by the Legislature. Following that, we provide a detailed and comprehensive legal discussion of the relevant authorities that support our legal opinions regarding the application of Nevada's two-thirds majority requirement to your specific legal question. Finally, we note that the legal opinions expressed in this letter are limited solely to the application of Nevada's two-thirds majority requirement to the specific types of bills directly discussed in this letter. We do not express any other legal opinions in this letter concerning the application of Nevada's two-thirds majority requirement to any other types of bills that are not directly discussed in this letter.

As explained in the legal discussion below, if a bill does not change the existing statutory computation bases for the net proceeds tax but changes only the method of collecting the net proceeds tax, we believe that the bill would not be subject to Nevada's two-thirds majority requirement because the bill would not increase the State's tax revenue given that the overall or aggregate amount collected from all the tax payments made by the mining operation under the existing statutory tax formula would not change but would remain the same. In particular, because the bill would require the State to credit any overpayment made by the mining operation of the estimated net proceeds tax occurring within a calendar year against the mining operation's subsequent payments of the net proceeds tax for the next calendar year, the overall or aggregate amount collected from all the tax payments made by the mining operation under the existing statutory tax formula would not change but would remain the same, and the bill would not increase the State's tax revenue. See State v. Manhattan Silver Mining Co., 4 Nev. 318, 332-34 (1868) (explaining that statutory changes in the method of collecting the net proceeds tax "do not in any way alter the burden or amount of taxation. The old law and the new law alike require and authorize the collection of the same amount of taxes.").

Therefore, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax. Accordingly, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to S.B. 3 of the 31st Special Session of the Legislature.

BACKGROUND

1. Purpose and intent of Nevada's original constitutional majority requirement for the final passage of bills.

When the Nevada Constitution was framed in 1864, the Framers debated whether the Legislature should be authorized to pass bills by a simple majority of a quorum under the traditional parliamentary rule or whether the Legislature should be required to meet a greater threshold for the final passage of bills. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866).

Under the traditional parliamentary rule, if a quorum of members is present in a legislative house, a simple majority of the quorum is sufficient for the final passage of bills by the house, unless a constitutional provision establishes a different requirement. See Mason's Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by each House of Congress, which may pass bills by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) ("[A]t the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired."); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

The Framers of the Nevada Constitution rejected the traditional parliamentary rule by providing in Article 4, Section 18 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). The purpose and intent of the Framers in adopting this constitutional majority requirement was to ensure that the Senate and Assembly could not pass bills by a simple majority of a quorum. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866); see also Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada, at 208 (1972).

The constitutional majority requirement for the final passage of bills is now codified in Article 4, Section 18(1), and it provides that "a majority of all the members elected to each House is necessary to pass every bill," unless the bill is subject to the two-thirds majority requirement in Article 4, Section 18(2). Under the constitutional majority requirement in Article 4, Section 18(1), the Senate and Assembly may pass a bill only if a majority of the entire membership authorized by law to be elected to each House votes in favor of the bill. See Marionneaux v. Hines, 902 So. 2d 373, 377-79 (La. 2005) (holding that in constitutional provisions requiring a majority or super-majority of members elected to each house to pass a legislative measure or constitute a quorum, the terms "members elected" and "elected members" mean the entire membership authorized by law to be elected to each house); State ex rel. Garland v. Guillory, 166 So. 94, 101-02 (La. 1935); In re Majority of Legislature, 8 Haw. 595, 595-98 (1892).

Thus, under the current membership authorized by law to be elected to the Senate and Assembly, if a bill requires a constitutional majority for final passage under Article 4, Section 18(1), the Senate may pass the bill only with an affirmative vote of at least 11 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 22 of its 42 members. See Nev. Const. art. 4, § 5, art. 15, § 6 & art. 17, § 6 (directing the Legislature to establish by law the number of members of the Senate and Assembly); NRS Chapter 218B (establishing by law 21 members of the Senate and 42 members of the Assembly).

2. Purpose and intent of Nevada's two-thirds majority requirement for the final passage of bills which create, generate or increase any public revenue in any form.

At the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments to Article 4, Section 18 that were proposed by a ballot initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

> Except as otherwise provided in subsection 3, 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*, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception in subsection 3, which provides that "*[a] majority of all of the members elected to each House* may

refer any measure which 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).

Under the two-thirds majority requirement, if a bill "creates, generates, or increases any public revenue in any form," the Senate may pass the bill only with an affirmative vote of at least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

When the ballot initiative adding the two-thirds majority requirement to the Nevada Constitution was presented to the voters in 1994 and 1996, one of the primary sponsors of the initiative was former Assemblyman Jim Gibbons. See Guinn v. Legislature (Guinn II), 119 Nev. 460, 471-72 (2003) (discussing the two-thirds majority requirement and describing Assemblyman Gibbons as "the initiative's prime sponsor").[2] During the 1993 Legislative Session, Assemblyman Gibbons sponsored Assembly Joint Resolution No. 21 (A.J.R. 21), which proposed adding a two-thirds majority requirement to Article 4, Section 18(2), but Assemblyman Gibbons was not successful in obtaining its passage. See Legislative History of A.J.R. 21, 67th Leg. (Nev. LCB Research Library 1993).[3] Nevertheless, because Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 provides some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement, the Nevada Supreme Court has reviewed and considered that testimony when discussing the two-thirds majority requirement that was ultimately approved by the voters in 1994 and 1996. Guinn II, 119 Nev. at 472.

In his legislative testimony on A.J.R. 21 in 1993, Assemblyman Gibbons stated that the two-thirds majority requirement was modeled on similar constitutional provisions in other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons testified that the two-thirds majority requirement would "require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes." Id. However, Assemblyman Gibbons also stated that the two-thirds majority requirement "would not impair any existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds majority requirement "would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs" because "Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for *new revenues* was clear and convincing." Id. (emphasis added). In particular, Assemblyman Gibbons testified as follows:

> James A. Gibbons, Assembly District 25, spoke as the prime sponsor of A.J.R. 21 which proposed to amend the Nevada Constitution to *require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes*.
> * * *
> Mr. Gibbons stressed A.J.R. 21 amended the Nevada Constitution to require bills providing for a general tax increase be passed by a two-thirds majority of both houses of the legislature. The resolution would apply to property taxes, sales and use taxes, business taxes based on income, receipts, assets, capital stock or number of employees, taxes on net proceeds of mines and taxes on liquor and cigarettes.
> *Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states*. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.
> * * *
> Mr. Gibbons believed a provision requiring an extraordinary majority was a device used to hedge or protect certain laws which he believed should not be lightly changed. A.J.R. 21 would ensure greater stability and preserve certain statutes from the constant tinkering of transient majorities.

> Mr. Gibbons addressed some of the anticipated objections. Some will claim A.J.R. 21 would deprive the state of revenues necessary to provide essential state services. Mr. Gibbons conveyed that was not the case. A.J.R. 21 *would not impair any existing revenues*. It was not a tax rollback and did not impose rigid caps on taxes or spending. *Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for new revenues was clear and convincing*. A.J.R. 21 would not hamstring state government or prevent state government from responding to legitimate fiscal emergencies.
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> * * *
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> Mr. Gibbons concluded by saying the measure did not propose government do less, but actually A.J.R. 21 could permit government to do more. A.J.R. 21 was a simple moderate measure that *would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs*. Mr. Gibbons urged the committee's approval of A.J.R. 21.

Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993) (emphasis added)).

In addition to Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993, the ballot materials presented to the voters in 1994 and 1996 also provide some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement. Guinn, 119 Nev. at 471-72. The ballot materials informed the voters that the two-thirds majority requirement would make it more difficult for the Legislature to enact bills "raising" or "increasing" taxes and that "[i]t may require state government to prioritize its spending and economize rather than turning to *new sources* of revenue." Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added). In particular, the ballot materials stated as follows:

> ARGUMENTS FOR PASSAGE
>
> Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. *It may require state government to prioritize its spending and economize rather than turning to new sources of revenue*. The legislature, by simple majority vote, could ask for the people to vote on any increase.
>
> ARGUMENTS AGAINST PASSAGE
>
> Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added).

Finally, based on Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, the Nevada Supreme Court has described the purpose and intent of the two-thirds majority 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 II, 119 Nev. at 471 (emphasis added).

With this background information in mind, we turn next to discussing your specific legal question.

DISCUSSION

You have asked whether the two-thirds majority requirement applies to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax.

To date, there are no reported cases from Nevada's appellate courts addressing your legal question. In the absence of any controlling Nevada case law, we must address your legal question by: (1) applying several well-established rules of construction followed by Nevada's appellate courts; (2) examining contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996; and (3) considering case law interpreting similar constitutional provisions from other jurisdictions for guidance in this area of the law.

We begin by discussing the rules of construction for constitutional provisions approved by the voters through a ballot initiative. Following that discussion, we answer your specific legal question.

1. Rules of construction for constitutional provisions approved by the voters through a ballot initiative.

The Nevada Supreme Court has long held that the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the voters through a ballot initiative. See Lorton v. Jones, 130 Nev. 51, 56-57 (2014) (applying the rules of statutory construction to the constitutional term-limit provisions approved by the voters through a ballot initiative). As stated by the court:

> In construing constitutions and statutes, the first and last duty of courts is to ascertain the intention of the convention and legislature; and in doing this they must be governed by well-settled rules, applicable alike to the construction of constitutions and statutes.

State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1887). Thus, when applying the rules of construction to constitutional provisions approved by the voters through a ballot initiative, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

However, if the constitutional language is capable of "two or more reasonable but inconsistent interpretations," making it susceptible to ambiguity, uncertainty or doubt, the court will interpret the constitutional provision according to what history, reason and public policy would indicate the drafters and the voters intended. Miller, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)). Under such circumstances, the court will look "beyond the language to adopt a construction that best reflects the intent behind the provision." Sparks Nugget, Inc. v. State, Dep't of Tax'n, 124 Nev. 159, 163 (2008). Thus, if there is any ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, "[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).

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W.

109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it." Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature's power, those "[r]estrictions and limitations are not extended to include matters not covered." City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

For example, under the South Dakota Constitution, the South Dakota Legislature may pass its general appropriations bill to fund the operating expenses of state government by a majority of all the members elected to each House, but the final passage of any special appropriations bills to authorize funding for other purposes requires "a two-thirds vote of all the members of each branch of the Legislature." S.D. Const. art. III, § 18, art. XII, § 2. In interpreting this two-thirds majority requirement, the South Dakota Supreme Court has determined that the requirement must not be extended by construction or inference to include situations not clearly within its terms. Apa v. Butler, 638 N.W.2d 57, 69-70 (S.D. 2001). As further explained by the court:

> [P]etitioners strongly urged during oral argument that the challenged appropriations from the [special funds] must be special appropriations because it took a two-thirds majority vote of each House of the legislature to create the two special funds in the first instance. Petitioners correctly pointed out that allowing money from the two funds to be reappropriated in the general appropriations bill would allow the legislature to undo by a simple majority vote what it took a two-thirds majority to create. On that basis, petitioners invite this Court to read a two-thirds vote requirement into the Constitution for the amendment or repeal of any special continuing appropriations measure. This we cannot do.
>
> Our Constitution must be construed by its plain meaning: "If the words and language of the provision are unambiguous, 'the language in the constitution must be applied as it reads.'" Cid v. S.D. Dep't of Social Servs., 598 N.W.2d 887, 890 (S.D. 1999). Here, the constitutional two-thirds voting requirement for appropriations measures is only imposed on the *passage* of a special appropriation. See S.D. Const. art. XII, § 2. There is no constitutional requirement for a two-thirds vote on the repeal or amendment of an existing special appropriation, not to mention a continuing special appropriation. Generally:
>
> > [s]pecial provisions in the constitution as to the number of votes required for the passage of acts of a particular nature . . . are not extended by construction or inference to include situations not clearly within their terms. Accordingly, a special provision regulating the number of votes necessary for the passage of bills of a certain character does not apply to the repeal of laws of this character, or to an act which only amends them.

Apa, 638 N.W.2d at 69-70 (quoting 82 C.J.S. Statutes § 39 (1999) (republished as 82 C.J.S. Statutes § 52 (Westlaw 2019)).

Lastly, in matters involving state constitutional law, the Nevada Supreme Court is the final arbiter or interpreter of the meaning of the Nevada Constitution. Nevadans for Nev. v. Beers, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."); Guinn II, 119 Nev. at 471 (describing the Nevada Supreme Court and its justices "as the ultimate custodians of constitutional meaning."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not

final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining Ass'n, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on an opinion of its legal counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Id. at 540. For example, when the meaning of the term "midnight Pacific standard time," as formerly used in the constitutional provision limiting legislative sessions to 120 days, was subject to uncertainty, ambiguity and doubt following the 2001 Legislative Session, the Nevada Supreme Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

Consequently, in determining whether the two-thirds majority requirement applies to a particular bill, the Legislature has the power to interpret Article 4, Section 18(2), in the first instance, as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to interpret constitutional provisions governing legislative procedure). Moreover, because Article 4, Section 18(2) involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See Platz, 60 Nev. at 308 (stating that the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it."). As further explained by the Nevada Supreme Court:

> Briefly stated, legislative power is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them. This power is indeed very broad, and, except where limited by Federal or State Constitutional provisions, that power is practically absolute. Unless there are specific constitutional limitations to the contrary, statutes are to be construed in favor of the legislative power.

Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Finally, when the Legislature exercises its power to interpret Article 4, Section 18(2) in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement by following an opinion of its legal counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. With these rules of construction as our guide, we must apply them in the same manner as Nevada's appellate courts to answer your specific legal question.

> 2. Does the two-thirds majority requirement apply to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax?

Under the rules of construction, we must start by examining the plain language of the two-thirds majority requirement in Article 4, Section 18(2), which provides in relevant part that:

> [A]n 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, including but not limited to taxes, fees, assessments and rates, or *changes in the computation bases* for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added).

Based on its plain language, the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. 230, 234 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, we must review the normal and ordinary meanings commonly ascribed to the terms "creates, generates, or increases" in Article 4, Section 18(2). The common dictionary meaning of the term "create" is to "bring into existence" or "produce." Webster's New Collegiate Dictionary 304 (9th ed. 1991). The common dictionary meaning of the term "generate" is also to "bring into existence" or "produce." Id. at 510. Finally, the common dictionary meaning of the term "increase" is to "make greater" or "enlarge." Id. at 611.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases" as used in Article 4, Section 18(2), we believe that the two-thirds majority requirement applies to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by imposing new or increased state taxes. However, when a bill does not impose new or increased state taxes but simply maintains the existing "computation bases" currently in effect for *existing* state taxes, we do not believe that the two-thirds majority requirement applies to the bill.

Given the plain language in Article 4, Section 18(2), the two-thirds majority requirement applies to a bill which makes "changes in the *computation bases* for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). Based on its normal and ordinary meaning, a "computation base" is a formula that consists of "a number that is multiplied by a rate or [from] which a percentage or fraction is calculated." Webster's New Collegiate Dictionary 133 & 271 (9th ed. 1991) (defining the terms "computation" and "base"). In other words, a "computation base" is a formula which consists of a base number, such as an amount of money, and a number serving as a multiplier, such as a percentage or fraction, that is used to calculate the product of those two numbers.

By applying the normal and ordinary meaning of the term "computation base," we believe that the two-thirds majority requirement applies to a bill which directly changes the statutory computation bases—that is, the statutory formulas—used for calculating existing state taxes, so that the revised statutory formulas directly bring into existence, produce or enlarge public revenue in the first instance because the existing statutory base numbers or the existing statutory multipliers are changed by the bill in a manner that "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). However, when a bill does not change—but maintains—the existing statutory base numbers and the existing statutory multipliers currently in effect for the existing statutory formulas, we do not believe that the bill "creates, generates, or increases any public revenue" within the meaning, purpose and intent of the two-thirds majority requirement because the existing "computation bases" currently in effect are not changed by the bill. Id.

Accordingly, to answer your legal question, we must consider whether a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax would be considered a bill which *changes* or a bill which *maintains* the existing statutory computation bases currently in effect for

the net proceeds tax. In order to make this determination, we must consider the existing constitutional and statutory provisions governing the net proceeds tax.

Article 10, Section 1(1) of the Nevada Constitution exempts mines and mining claims from the property tax and further provides that mines and mining claims must be assessed and taxed only as provided in Article 10, Section 5 of the Nevada Constitution. Under Article 10, Section 5, the Legislature must impose a tax on 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 on 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 provisions of NRS Chapter 362, which impose a tax on 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(1).

However, the rate of the net proceeds tax also varies based on several other factors. First, the minimum rate of 2 percent is increased to equal the combined rate of state and local ad valorem property taxes at the situs of the operation if the combined rate of those taxes is more than 2 percent. NRS 362.140(1). Second, the maximum rate of 5 percent is imposed on a mining operation for which the net proceeds in a calendar year exceed $4,000,000. NRS 362.140(5). Third, for certain geothermal operations, the tax rate equals the combined rate of state and local ad valorem property taxes at the situs of the geothermal operation. NRS 362.140(4). Finally, the tax rate on royalties is 5 percent. NRS 362.140(3).

Under the existing provisions of NRS Chapter 362, the State collects the net proceeds tax from each mining operation based on the actual net proceeds from the preceding calendar year. NRS 362.100-362.240. In addition, the State requires each mining operation to file a statement which shows the estimated gross yield and estimated net proceeds for the current calendar year and the estimated royalties that will be paid during the current calendar year. NRS 362.115(1). However, at present, the State is authorized to use the estimated amounts "only to prepare estimates for use by local governments in the preparation of their budgets." NRS 362.115(2).

Your legal question involves a bill which would not change the existing statutory computation bases for the net proceeds tax as set forth in NRS 362.140. Instead, the bill would, on a temporary basis, change only the method of collecting the net proceeds tax under NRS 362.100-362.240. Based on case law from the Nevada Supreme Court regarding the collection of the net proceeds tax, we believe that such a bill would not be considered a bill which changes the existing statutory computation bases currently in effect for the net proceeds tax.

In 1868, the Nevada Supreme Court decided the case of State v. Manhattan Silver Mining Co., 4 Nev. 318 (1868). Under the constitutional and statutory provisions in effect at the time, each mining operation's net proceeds were taxed as personal property subject to ad valorem property taxes. Nev. Const. art. 10, § 1 (1864); 1865 Nev. Stat., ch. 85, § 99, at 306; 1866 Nev. Stat., ch. 35, § 4, at 78; 1867 Nev. Stat. 1st Spec. Sess., ch. 3, § 3, at 160. In the Manhattan Silver Mining case, the Nevada Supreme Court rejected the mining operation's constitutional challenge to the statutory provisions that required payment of the net proceeds tax in four quarterly installments during the tax year instead of paying the entire amount in a single payment near the end of the tax year like other property owners. The mining operation argued that requiring the payment of the net proceeds tax in four quarterly installments treated its mining property differently from other taxable property in violation of the constitutional provision requiring "a uniform and equal rate of assessment and taxation" in Article 10, Section 1. The court rejected the mining operation's argument, stating:

> [T]he constitution subjected the proceeds of mines, in lieu of the body of the mines, especially to an ad valorem taxation, and that it meant not a part, but the entire proceeds of such mines. Now, if the entire proceeds of the mines for each fiscal year are to pay an ad valorem tax of one and one-quarter percent, we cannot see how it can possibly increase the percentage paid, to require this sum to be paid by the owner of the mine in four quarterly installments instead of

> being paid all at one time. *The amount to be paid to the State would not vary by the fraction of a mill whether it were paid in one payment or in four installments*.

Manhattan Silver Mining, 4 Nev. at 332-33 (emphasis added).

Thus, the court determined that the statutory changes made in the method of collecting the net proceeds tax from the mining operation (four quarterly installments instead of one annual payment) did not increase the State's tax revenue because the overall or aggregate amount collected from all the tax payments made by the mining operation under the existing statutory computation bases did not change but remained the same. As further explained by the court, such statutory changes in the method of collecting state taxes "do not in any way alter the burden or amount of taxation. The old law and the new law alike require and authorize the collection of the same amount of taxes." Manhattan Silver Mining, 4 Nev. at 333-34.

Accordingly, based on the reasoning of the Nevada Supreme Court in Manhattan Silver Mining, if a bill does not change the existing statutory computation bases for the net proceeds tax but changes only the method of collecting the net proceeds tax, we believe that the bill would not be subject to Nevada's two-thirds majority requirement because the bill would not increase the State's tax revenue given that the overall or aggregate amount collected from all the tax payments made by the mining operation under the existing statutory tax formula would not change but would remain the same. In particular, because the bill would require the State to credit any overpayment made by the mining operation of the estimated net proceeds tax occurring within a calendar year against the mining operation's subsequent payments of the net proceeds tax for the next calendar year, the overall or aggregate amount collected from all the tax payments made by the mining operation under the existing statutory tax formula would not change but would remain the same, and the bill would not increase the State's tax revenue.

Furthermore, we believe that our legal conclusion is supported by several other rules of construction. First, when the drafters of a constitutional provision want the provision to apply to particular classes of persons, things or circumstances, it is presumed that they will express their intention by using language that includes those particular classes of persons, things or circumstances within its scope. However, when the drafters fail to use such language, it must be presumed that the drafters did not intend for the provision to apply to those particular classes of persons, things or circumstances. See V & T R.R. v. Elliott, 5 Nev. 358, 364 (1870) ("The mention of one thing or person, is in law an exclusion of all other things or persons."); State Dep't of Tax'n v. DaimlerChrysler, 121 Nev. 541, 548 (2005) ("[O]missions of subject matters from statutory provisions are presumed to have been intentional."). Thus, under the rule of *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of another"), when a constitutional provision expressly mentions one thing, it is presumed that the drafters intended to exclude all other things. See State v. Javier C., 128 Nev. 536, 541 (2012) ("Nevada follows the maxim "*expressio unius est exclusio alterius*," the expression of one thing is the exclusion of another."); Galloway v. Truesdell, 83 Nev. 13, 26 (1967).

Second, under the rule of *ejusdem generis* ("of the same kind or class"), when a general term in a constitutional provision is part of a list of more specific terms, the general term may be interpreted as being restricted in meaning by the specific terms, so its scope includes only those things that are of the same kind, class or nature as the specific terms. See Orr Ditch Co. v. Justice Court, 64 Nev. 138, 147 (1947) ("[G]eneral terms in a statute may be regarded as limited by subsequent more specific terms . . . and [construed] as including only things or persons of the same kind, class, character, or nature as those specifically enumerated."); Phelps v. State Farm Mut. Auto. Ins., 112 Nev. 675, 682 (1996) ("This court has previously applied the rule of *ejusdem generis*, which translated means 'of the same kind, class or nature.'").

Third, under the rule of *noscitur a sociis* ("it is known by its associates"), the meaning of particular terms in a constitutional provision may be ascertained by reference to the other terms that are associated with it in the provision. See Orr Ditch Co. v. Justice Court, 64 Nev. 138, 146 (1947) ("[T]he meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute."); Ford v. State, 127 Nev. 608, 622 n.8 (2011) ("[W]ords are known by—acquire meaning from—the company they keep."); United States v. Williams, 553 U.S. 285, 293 (2008) ("[A] word is given more precise content by the neighboring words with which it is associated.").

With regard to the two-thirds majority requirement, the drafters expressly provided that the requirement applies to "changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2). However, the drafters also could have expressly provided that the requirement applies to changes in the method of collecting state taxes, but they failed to use such language. Thus, by expressly mentioning "changes in the computation bases for taxes, fees, assessments and rates," it must be presumed that the drafters intended to exclude all other changes that are not of the same kind, class or nature as "changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2).

As discussed previously, the Nevada Supreme Court has determined that when the State makes changes in the method of collecting state taxes, including, without limitation, the net proceeds tax, those changes do not result in any changes in the existing statutory computation bases used for calculating the total tax liability due from taxpayers. Manhattan Silver Mining, 4 Nev. at 332-34 (explaining that statutory changes in the method of collecting state taxes "do not in any way alter the burden or amount of taxation. The old law and the new law alike require and authorize the collection of the same amount of taxes."). Consequently, changes in the method of collecting state taxes are not of the same kind, class or nature as "changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2). Therefore, it must be presumed that the drafters of the two-thirds majority requirement did not intend to include changes in the method of collecting state taxes in the constitutional requirement mandating a two-thirds majority vote in Article 4, Section 18(2).

We also find support for our interpretation of Article 4, Section 18(2) from the contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996.

When interpreting constitutional provisions approved by the voters through a ballot initiative, the court may consider contemporaneous extrinsic evidence of the purpose and intent of the constitutional provisions that was available when the initiative was presented to the voters for approval. See 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019) ("To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time."). However, even though the court may consider contemporaneous extrinsic evidence of intent, the court will not consider post-enactment statements, affidavits or testimony from sponsors regarding their intent. See A-NLV Cab Co. v. State Taxicab Auth., 108 Nev. 92, 95-96 (1992) (holding that the court will not consider post-enactment statements, affidavits or testimony from legislators as a means of establishing their legislative intent, and any such materials are inadmissible in evidence as a matter of law); Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 193 (Alaska 2007) ("Because we must construe an initiative by looking to the materials considered by the voters themselves, we cannot rely on affidavits of the sponsors' intent."); 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019).

The court may find contemporaneous extrinsic evidence of intent from the legislative history surrounding the proposal and approval of the ballot measure. See Ramsey v. City of N. Las Vegas, 133 Nev. Adv. Op. 16, 392 P.3d 614, 617-19 (2017). The court also may find contemporaneous extrinsic evidence of intent from statements made by proponents and opponents of the ballot measure. See Guinn II, 119 Nev. at 471-72. Finally, the court may find contemporaneous extrinsic evidence of intent from the ballot materials provided to the voters, such as the question, explanation and arguments for and against passage included in the sample ballots sent to the voters. See Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001).

As discussed previously, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is contemporaneous extrinsic evidence that the two-thirds majority requirement was intended to apply to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by raising "new taxes" or "new revenues" or by increasing "existing taxes." Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)); Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994). However,

the contemporaneous extrinsic evidence also indicates that the two-thirds majority requirement was not intended to "impair any existing revenues." Id.

Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. We believe that the absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill.

Finally, we find support for our interpretation of Article 4, Section 18(2) based on the case law interpreting similar constitutional provisions from other jurisdictions. As discussed previously, the two-thirds majority requirement in the Nevada Constitution was modeled on constitutional provisions from other states. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 12-13 (Nev. May 4, 1993)). As confirmed by Assemblyman Gibbons:

> Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Id. at 12.

Under the rules of construction, "[w]hen Nevada legislation is patterned after a federal statute or the law of another state, it is understood that 'the courts of the adopting state usually follow the construction placed on the statute in the jurisdiction of its inception.'" Advanced Sports Info. v. Novotnak, 114 Nev. 336, 340 (1998) (quoting Sec. Inv. Co. v. Donnelley, 89 Nev. 341, 347 n.6 (1973)). Thus, if a provision in the Nevada Constitution is modeled on a similar constitutional provision "from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state." State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 763 (2001) ("[S]ince Nevada relied upon the California Constitution as a basis for developing the Nevada Constitution, it is appropriate for us to look to the California Supreme Court's interpretation of the [similar] language in the California Constitution.").

Consequently, in interpreting and applying Nevada's two-thirds majority requirement, it is appropriate to consider case law from the other states where courts have interpreted the similar supermajority requirements that served as the model for Nevada's two-thirds majority requirement. Furthermore, in considering that case law, we must presume that the drafters and voters intended for Nevada's two-thirds majority requirement to be interpreted in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those other states.

In 1992, the voters of Oklahoma approved a state constitutional provision imposing a three-fourths supermajority requirement on the Oklahoma Legislature that applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In addition, Oklahoma has a state constitutional provision, known as an "Origination Clause," which provides that "[a]ll bills for raising revenue" must originate in the lower house of the Oklahoma Legislature. Id. The Oklahoma Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1158 n.35 (Okla. 2017). In relevant part, Oklahoma's constitutional provisions state:

> A. *All bills for raising revenue* shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
>
> * * *
>
> D. *Any revenue bill* originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. * * *

Okla. Const. art. V, § 33 (emphasis added).

In Fent v. Fallin, 345 P.3d 1113, 1114-15 (Okla. 2014), the petitioner claimed that Oklahoma's supermajority requirement applied to a bill which modified Oklahoma's income tax rates even though the effect of the modifications did not increase revenue. The bill included provisions "deleting expiration date of specified tax rate levy." Id. at 1116 n.6. The Oklahoma Supreme Court held that the supermajority requirement did not apply to the bill. Id. at 1115-18. In discussing the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court found that:

> [T]he ballot title reveals that the measure was aimed only at bills "intended to raise revenue" and "revenue raising bills." The plain, popular, obvious and natural meaning of "raise" in this context is "increase." This plain and popular meaning was expressed in the public theme and message of the proponents of this amendment: "No New Taxes Without a Vote of the People."
>
> Reading the ballot title and text of the provision together reveals the 1992 amendment had two primary purposes. First, the amendment has the effect of limiting the generation of State revenue to existing revenue measures. Second, the amendment requires future bills "intended to raise revenue" to be approved by either a vote of the people or a three-fourths majority in both houses of the Legislature.

Id. at 1117.

Based on the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court determined that "[n]othing in the ballot title or text of the provision reveals any intent to bar or restrict the Legislature from amending the existing revenue measures, so long as such statutory amendments do not 'raise' or increase the tax burden." Id. at 1117-18. Given that the bill at issue in Fent included provisions "deleting expiration date of specified tax rate levy," we must presume the court concluded that those provisions of the bill did not result in an increase in the tax burden that triggered the supermajority requirement even though those provisions of the bill eliminated the future expiration of existing state taxes.

In Naifeh v. State ex rel. Okla. Tax Comm'n, 400 P.3d 759, 761 (Okla. 2017), the petitioners claimed that Oklahoma's supermajority requirement applied to a bill which was intended to "generate approximately $225 million per year in new revenue for the State through a new $1.50 assessment on each pack of cigarettes." The state argued that the supermajority requirement did not apply to the cigarette-assessment bill because it was a regulatory measure, not a revenue measure. Id. at 766. In particular, the state contended that: (1) the primary purposes of the bill were to reduce the incidence of smoking and compensate the state for the harms caused by smoking; (2) any raising of revenue by the bill was merely incidental to those purposes; and (3) the bill did not levy a tax, but rather assessed a regulatory fee whose proceeds would be used to offset the costs of State-provided healthcare for those who smoke, even though most of the revenue generated by the bill was not earmarked for that purpose. Id. at 766-68.

The Oklahoma Supreme Court held that the supermajority requirement applied to the cigarette-assessment bill because the text of the bill "conclusively demonstrate[d] that the primary operation and effect of the measure [was] to raise *new* revenue to support state government." Id. at 766 (emphasis added). In reaching its holding, the court reiterated the two-part test that it uses to determine whether a bill is subject to Oklahoma's supermajority requirement for "bills for raising revenue." Id. at 765. Under the two-part test, a bill is subject to the supermajority requirement if: (1) the principal object of the bill is to raise *new* revenue for the support of state government, as opposed to a bill under which revenue may incidentally arise; and (2) the bill levies a *new* tax in the strict sense of the word. Id. In a companion case, the court stated that it invalidated the cigarette-assessment bill because:

> [T]he cigarette measure fit squarely within our century-old test for "revenue bills," in that it both had the primary purpose of raising revenue for the support of state government *and* it levied a *new* tax in the strict sense of the word.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1153 (emphasis added); accord Sierra Club v. State ex rel. Okla. Tax Comm'n, 405 P.3d 691, 694-95 (Okla. 2017).

In 1996, the voters of Oregon approved a state constitutional provision imposing a three-fifths supermajority requirement on the Oregon Legislature, which provides that

"[t]here-fifths of all members elected to each House shall be necessary to pass *bills for raising revenue*." Or. Const. art. IV, § 25 (emphasis added). In addition, Oregon has a state constitutional provision, known as an "Origination Clause," which provides that "*bills for raising revenue* shall originate in the House of Representatives." Or. Const. art. IV, § 18 (emphasis added). The Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005).

In determining the scope of Oregon's constitutional provisions for "bills for raising revenue," the Oregon Supreme Court has adopted a two-part test that is similar to the two-part test followed by the Oklahoma Supreme Court. Bobo, 107 P.3d at 24. In particular, the Oregon Supreme Court has stated:

> Considering the wording of [each constitutional provision], its history, and the case law surrounding it, we conclude that the question whether a bill is a "bill for raising revenue" entails two issues. The first is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether *the bill possesses the essential features of a bill levying a tax*.

Id. (emphasis added).

In applying its two-part test in Bobo, the court observed that "not every statute that brought money into the treasury was a 'bill for raising revenue' within the meaning of [the constitutional provisions]." Bobo, 107 P.3d at 24. Instead, the court found that the constitutional provisions applied only to the specific types of bills that the framers had in mind—"bills to levy taxes and similar exactions." Id. at 23. Based on the normal and ordinary meanings commonly ascribed to the terms "raise" and "revenue" in the constitutional provisions, the court reached the following conclusions:

> We draw two tentative conclusions from those terms. First, a bill will "raise" revenue only if it "collects" or "brings in" money to the treasury. Second, not every bill that collects or brings in money to the treasury is a "bil[l] for raising revenue." Rather, the definition of "revenue" suggests that the framers had a specific type of bill in mind—*bills to levy taxes and similar exactions*.

Id. (emphasis added).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill unless it levies new or increased state taxes in the strict sense of the word or possesses the essential features of a bill that levies new or increased state taxes or similar exactions, "including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2).

Consequently, we believe that Nevada's two-thirds majority requirement does not apply to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax, because such a bill does not levy new or increased state taxes as described in the cases from Oklahoma and Oregon. Instead, because such a bill maintains the existing computation bases currently in effect for the net proceeds tax, it is the opinion of this office that such a bill does not create, generate or increase any public revenue within the meaning, purpose and intent of Nevada's two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill.

CONCLUSION

It is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which does not change the existing statutory computation bases for the net proceeds tax but which, on a temporary basis, changes only the method of collecting the net proceeds tax. Accordingly, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to S.B. 3 of the 31st Special Session of the Legislature.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

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[1] Article 4, Section 18(2) uses the inclusive phrase "taxes, fees, assessments and rates." However, for ease of discussion in this letter, we will use the term "state taxes" to serve in the place of the inclusive phrase "taxes, fees, assessments and rates."

[2] In Guinn v. Legislature, the Nevada Supreme Court issued two reported opinions—Guinn I and Guinn II—that discussed the two-thirds majority requirement. Guinn v. Legislature (Guinn I), 119 Nev. 277 (2003), *opinion clarified on denial of reh'g*, Guinn v. Legislature (Guinn II), 119 Nev. 460 (2003). In 2006, the court overruled certain portions of its Guinn I opinion. Nevadans for Nev. v. Beers, 122 Nev. 930, 944 (2006). However, even though the court overruled certain portions of its Guinn I opinion, the court has not overruled any portion of its Guinn II opinion, which remains good law.

[3] Available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf.

Sincerely,

KEVIN C. POWERS
General Counsel

Roll call on Senate Bill No. 3:

YEAS—19.

NAYS—Hansen, Hardy—2.

Senate Bill No. 3 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 1, 2.

Senator Cannizzaro moved that the Senate adjourn until Thursday, July 16, 2020, at 9:00 p.m.

Motion carried.

Senate adjourned at 7:53 p.m.

Approved:

KATE MARSHALL
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate