THE NINTH DAY

CARSON CITY (Thursday) July 16, 2020

Senate called to order at 11:37 p.m.

President Marshall presiding.

Roll called.

All present.

Prayer by Senator David Parks.

Let us pray. Thank You, Lord, for this day You have given us. Lord, we come before You to welcome Your presence among us during this Special Legislative Session. As we strive to conclude today's series of discussions, meetings and hearings, we thank You for guiding our thoughts and actions toward the most productive outcomes. We pray that You give each member here the strength and wisdom to accomplish the tasks that must be executed to place our State back on a solid, prosperous footing. May all of the members of this Body work faithfully and courageously with compassion toward that which is best for our State and its residents during this critical time.

We especially give thanks to all of the hardworking, dedicated employees who without their expertise and devotion, we would find our work impossible to accomplish. Bless this Legislative Body and its staff.

Finally, may God bless Nevada's Governor Sisolak, giving him inspiration, guidance and direction during these very difficult times.

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 15, 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. 3.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, July 16, 2020

To the Honorable the Senate:

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

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that the following person be accepted as an accredited press representative, and that he be allowed the use of appropriate media facilities: KTVN-TV: Mark Cronon.

Motion carried

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 4.

Senator Ratti moved that the bill be referred to the Committee of the Whole.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Assembly Bill No. 4, with Senator Cannizzaro as Chair and Senator Ratti as Vice Chair.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 11:46 p.m.

Senator Cannizzaro presiding.

Assembly Bill No. 4 considered.

The Committee of the Whole was addressed by Sarah Adler, Charter School Association of Nevada; Cecia Alvarado, Nevada State Director, Mi Familia Vota; Lilith Baran; Kailey Barnett; Ryan Brown; Christi Cabrera, Director, Policy and Advocacy, Nevada Conservation League; Senator Cannizzaro; Jennifer Cantley, Nevada Environmental Justice Coalition; Elena Celapaz; Jackie Chiakulas; Laura Deitsch; Senator Denis; Aria Flores; Brian Frost; Senator Goicoechea; Arturo Gonzales; Alex Gosf; Tyre Gray, President, Nevada Mining Association; Russell Guindon, Principal Deputy Analyst, Fiscal Analysis Division, Legislative Counsel Bureau; Tameka Henry; Eric Jeng, Deputy Director, One APIA Nevada; Stella Kerr; Senator Kieckhefer; Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress; Dexter Lim, Sunrise Movement, Las Vegas, Nevada Environmental Justice Coalition; Ingrid Lopez; Katherine Lorenzo; Annette Magnus, Executive Director, Battle Born Progress; Vera Miller; Erika Minaberry; Lalo Montoya, Political Director, Make the Road Nevada; Cynthia Moore, Environmental Justice Coalition; Paul Moradkhan, Senior Vice President, Las Vegas Chamber of Commerce; Kimberly Null; Anna Perez-McKay; Olivia Piccirilli-Platte; Senator Pickard; Kevin C. Powers, General Counsel, Legal Division, Legislative Counsel Bureau; Amber Salgoup; Jenney Sartin, Chief Executive Officer, Pahrump Chamber of Commerce, Lyon County; Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada; Senator Settelmeyer; Ann Silver, Chief Executive Officer, Reno Sparks Chamber; Bryan Wachter, Senior Vice President, Retail Association of Nevada; Bailey Watkins; Madeleine Williams.

SENATOR CANNIZZARO:

We will open the hearing on Assembly Bill No. 4.

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

This short bill revises the formula for determining the tax on the Net Proceeds of Minerals (NPM) extracted. In section 1, the bill reduces the amount of the deductions a mining operation can take against their gross proceeds to calculate their net proceeds by 40 percent. Section 1,

subsection 3(a), does this by capping the amount of abatements listed in the newly created subparagraphs. It is existing law, relating to the deductions in statute, to limit those to taking no more than 60 percent of those deductions.

Subsection 3(b), chapter 12(b), is a new section. This section excludes the 60-percent restriction on royalties. Royalty proceeds are paid to the royalty recipient. The royalty recipient is responsible for filing the return and paying the taxes on the royalties, thus, the mining operation is allowed to deduct those from their calculations to get the net. If we did not do this, a double tax would be paid on royalties. If it were kept inside the 60 percent, the 40 percent would be taxed again along with the 100 percent paid by the royalty recipient.

Section 4 of the bill makes its provisions effective for the current calendar year, 2020. The provisions of the 60-percent cap on the amount of deductions a mining operation can subtract from their gross to get their net proceeds would be subject to the applicable NPM tax rate determined by Chapter 362 of NRS.

When mining operations file their return on February 16, 2021, it will be during Fiscal Year 2021. They will calculate actual net proceeds based on mining activity during the calendar year 2020. Under these provisions, a 60-percent reduction on the amount of deductions could be taken. The provisions of Assembly Bill No. 4 will also apply to the estimated payment to be made under the provisions of Senate Bill No. 3, heard yesterday.

The estimated impact on the tax payment to be paid in Fiscal Year 2021 for calendar year 2020 used calendar year 2019 data from the Department of Taxation (DOT), listed by mining operator, to simulate the potential impact. In calendar year 2019, there is approximately $7.6 billion of gross proceeds and approximately $5.5 billion in deductions. This generates net proceeds of approximately $2.3 billion. That is a net-to-gross ratio of 30.2 percent. The average effective tax rate is 4.92 percent. The NPM tax rate is constitutionally restricted to 5 percent.

The next section provides breakouts where the local government tax rate is that which comes from the property tax rate imposed by local governments: counties, cities, towns, General Improvement Districts and other districts that may exist in the tax district in which the mining operation exists. This rate comes to $37,946,364. The 75-cent rate for school districts, which is part of the Nevada Plan funding formula, is $15,612,863. The State 17-cent Debt Tax rate provides $3,538,916. Those 3 rates are referred to as the Combined Property Tax rate. The total under current statute, as listed, is $113,564,820.

The State General Fund tax rate is the difference between the NPM tax rate, which comes from the statutory provisions, less the Combined Property Tax rate. If the rate is the same as the Combined Property Tax rate, there is no General Fund rate. There would be no General Fund money generated from the net proceeds of that specific mining operation. This is the calculation being done by each individual mining operation. This is the data we know. It simulates the implementation of Assembly Bill No. 4. This was done by reducing the deductions on each mine 40 percent or, as stated in the bill, by capping deductions at 60 percent of what is allowed under current law. These numbers were used to recalculate the net proceeds by walking through the Tax Rate Determination Table in statute and recomputing the tax due. This totals $217,108,889.

The impact of Assembly Bill No. 4 and current statute benefits all rates imposed against the net proceeds. We are reducing the amount of deductions and increasing the tax base. This could affect the net-to-gross ratio, which could affect the tax rate imposed against that mining operation. If Assembly Bill No. 4, had been in place in calendar year 2019, it would have been estimated to generate $46,445,926. There would be an 87.2-percent increase in General Fund portion of the NPM due to Assembly Bill No. 4.

The current statute Fiscal Year 2021 consensus estimate is $62,696,705. This calculation was done by DOT, the Fiscal Department and the Budget Office. This is a static analysis. We applied the 87.2-percent increase to the consensus estimate with a yield of $117,361,358. In Fiscal Year 2021, Assembly Bill No. 4 estimates to generate an increment of $54,664,653. This is based on the payments mines will make in Fiscal Year 2021, based on the calendar year 2020 mining activity we are in now.

The bill, in its first reprint as amended by the Assembly, would apply the 60-percent reductions to the estimated payment required in Fiscal Year 2021, based on the estimate for calendar year 2021 mining activity period. That is estimated to be approximately $54.5 million, based on the provisions requiring estimated payment, thus, we get an extra payment. When the 60 percent on

deductions would apply, another $47.5 million is estimated to be generated. This is due to the implementation of Assembly Bill No. 4 and Senate Bill No. 3. In Fiscal Year 2021, the total of additional payments to be made due to these bills would be approximately $156.6 million. Senate Bill No. 3 is $102.2 million. This bill is the $54.5 million.

SENATOR SETTELMEYER:
What day would the reduction of the deductions start? Does it start on the calendar year for the business, our calendar year, a regular calendar year or the day it is signed by the Governor? When does that reduction of deductions begin?

MR. GUINDON:
The deductions would apply to calendar year 2020. Even though we are, here, making this decision on July 16, it would apply to the full calendar year. When a mining operation files its required tax return on February 16, 2021, to report gross proceeds and deductions, the 60 percent will apply to the calculation for determining the net proceeds from calendar year 2020 mining. This will determine their net proceeds taxes due in Fiscal Year 2021, based on calendar year 2020. It will apply to the entire calendar year period.

SENATOR SETTELMEYER:
Therefore, it is retroactive. It reduces the amount of the deduction and is not an increase in a rate. Is that correct?

MR. GUINDON:
By capping the deductions at 60 percent, the bill reduces the amount of deductions a taxpayer is allowed to take by 40 percent. This means you are subtracting a lower amount from your gross proceeds, which yields higher net proceeds. The applicable NPM tax rate would then be applied to determine the NPM tax due.

SENATOR SETTELMEYER:
This bill does not change the NPM tax rate. Is that true?

MR. GUINDON:
It does not change the 5-percent maximum rate in the *Nevada Constitution*. What can happen under the net proceeds, given a fixed-gross proceeds amount and lowering the amount of deductions that can be taken against it to determine net, there may be an increase in the net-to-gross ratio. Depending on where the entity was under current law, they could end up with a higher NPM tax rate as they walk through the tax-rate calculation in NRS 362.140, but they could not go higher than 5 percent. Some could end up with a higher rate. If they had a 40-percent NPM ratio under current law, the tax rate generated under NRS 362.140 would be 4 percent. If the impact of Assembly Bill No. 4, by lowering the deductions and raising the amount of net, would drive the net-to-gross ratio to over 50 percent, they would be at the maximum 5-percent rate. The NPM for that entity would go from 4 percent to 5 percent. Depending on the Property Tax rate for the location of the mine, this would increase the portion going to the State General Fund.

SENATOR KIECKHEFER:
Is the 60 percent in the bill there for a specific reason? What is the trigger on the 60 percent?

MR. GUINDON:
There is no trigger. All of the statutory deductions will stay in place. The mining company will still take the deductions, but they are restricted to taking no more than 60 percent of those deduction amounts, as those that can be deducted from their gross proceeds in determining their net proceeds.

SENATOR KIECKHEFER:
I may have used the wrong term. Is 60 percent arbitrary? Can it be changed?

MR. GUINDON:

This bill is similar to Assembly Bill 428 of the 76th Session, but that bill was 40 percent instead of 60 percent. It is up to the Legislature to decide what the percentage will be and where it will be set.

SENATOR KIECKHEFER:

At what level does it stop being a net proceeds tax? The confines of how we tax mining are still restricted by Article 10, Section 5, of the *Nevada Constitution*. Is that what sets up the maximum 5-percent rate?

KEVIN C. POWERS (General Counsel, Legal Division, Legislative Counsel Bureau):

Article 10, Section 5, as it exists now, uses the term "net proceeds." That term, and the term "proceeds," have been used in the *Nevada Constitution* since it was adopted in 1864. No constitutional provision has defined the term "net proceeds." When a term is undefined in the *Nevada Constitution*, it is generally given its ordinary and common meaning. Through legislation, the Legislature can give further meaning to a term, in this case, "proceeds" over "net proceeds."

In the first Legislative Session in 1865, the Legislature gave meaning to the term "proceeds" by developing the first Net Proceeds Tax. The Legislature created a standard deduction with that tax of $20 per ton. Every ton of ore extracted from the earth was the gross yield. The mining operation was able to deduct $20, which was the net proceeds. This was standard across the board for every mining company, and there were no itemized deductions.

That continued for several decades into the 1800s. By the 1890s, the Legislature enacted different legislation and started to provide itemized deductions. These were for extraction, transportation and reduction of the ores. That continued for several decades.

In the mid-1900s, the Legislature started to expand the list of deductions. They also took away deductions or adjusted them. This has continued through the present day.

History shows us the Legislature gives meaning to the terms "proceeds" and "net proceeds" in the *Nevada Constitution*. There is a wide range of how the Legislature can interpret that. It can have a standard deduction as in 1865, or it can have itemized deductions as it does now. In between, it can adjust those deductions in a manner it determines to be reasonable. The standard is that the Legislature has the power to determine the reasonable level of deductions. The courts have said the Legislature is entitled to deference in its determination of the reasonableness of deductions, and they will not question or overturn the Legislature's decision unless it is manifestly or grossly unjust. That standard is a broad one within which the Legislature can work.

One extreme would be removal of all deductions by the Legislature. This would be unconstitutional because it would become a gross proceeds tax not a net proceeds tax. If the Legislature allowed mining organizations to have 99.9 percent of their gross untaxed, that would be unconstitutionally unreasonable in how net proceeds are defined. Between those two extremes, the Legislature is given great deference by the courts to come up with a reasonable definition of the deductions allowable from gross yield in order to arrive at net proceeds.

SENATOR KIECKHEFER:

There has been recent subtraction and addition of individual deductions. At one point, we made changes to healthcare deductions. Can we choose which deductions to keep or throw aside, as compared to using a lump percentage?

MR. POWERS:

That is correct. Over time, the Legislature has added and withdrawn deductions. Within the last two decades, there have been one or two deductions withdrawn. Ultimately, the Legislature has to determine the correct balance of deductions to place against the gross to come up with a reasonable net proceeds. The Legislature has discretion in determining which deductions are allowable and which deductions are not.

SENATOR DENIS:

Under the scenario on your exhibit, what is the local government tax rate, and what is the school district portion?

MR. GUINDON:
The local government tax rate would vary by mining operation because, at a minimum, mines exist in a county. There would be a county debt and operating rate included. If the mine were in a town or city, it would have an operating rate and an applicable debt rate. General Improvement Districts or special assessments could also exist. The school debt rate would be included in the local government portion. The 75-cent rate itemized on the exhibit plays a role in the funding of K-12 education under the Nevada Plan. The State 17-cent debt rate, which is the property tax rate we use to fund capital improvement projects through bonds issued and paid, is also itemized. These would determine the Combined Property Tax rate. The local government component is what I have previously mentioned.

They will provide additional money under the provisions of Assembly Bill No. 4. I do not do estimates for the local government portion of the rates, only the General Fund. We do not have a consensus estimate I can calibrate against it as I do for the General Fund rate.

SENATOR DENIS:
Is the local government tax rate different depending on the county? Does the county determine the rate?

MR. GUINDON:
Yes, local governments have the ability to control their operating and/or debt rate within the provisions in statute. They cannot exceed the cap in law. The DOT administers a process to set these rates to ensure the combined rate does not exceed the statutory cap of $3.64 of $100 of assessed value.

SENATOR DENIS:
Could they choose to lower this, if desired?

MR. GUINDON:
Yes, a local government could raise or lower their rate. As they do, there could be an impact on the rate that belongs to the State General Fund. We see local governments change their rate from year to year, and that affects the State General Fund portion. This increasing volatility affects the General Fund portion and the ability to estimate that.

SENATOR DENIS:
Is that because the local part comes first?

MR. GUINDON:
Yes. When you look at the statutory provisions for rate determination in NRS 362.140, the minimum rate is the Combined Property Tax rate. The General Fund sits there, waiting to see if the actual tax rate the mine has to pay is greater than the Combined Property Tax rate. If it is, the General Fund rate is the difference between the rate required to be paid by the mine and the Combined Property Tax rate. From year to year, that rate can change. The good thing for the State General Fund portion is that approximately 96 or 97 percent of the General Fund portion of the net proceeds comes from gold and silver. Either the majority of gold and silver operations have net proceeds greater than $4 million, which requires the 5-percent maximum rate be imposed, or they have a net-to-gross ratio over 50 percent. This would also require imposition of the maximum 5-percent rate. The higher the rate imposed, the higher the chance there is an increment for the State General Fund rate and the higher that General Fund rate would be.

SENATOR DENIS:
Under this scenario, would more money go to schools only in the counties receiving the 75-cent rate, or would it be statewide?

MR. GUINDON:
The 75-cent rate would generate additional money, approximately 90 percent. You have an estimate for calendar year 2020. Assuming the status quo static analysis, it would go up by the 90 percent. How much this would generate for schools depends on mining operations existing in each county; some counties have more mining going on than others. It is part of the property tax portion. In this, two-thirds of it is outside of formula and one-third inside since the State holds

harmless against the one-third. In relationship to schools, the NPM tax is paid in one fiscal year and used in the budget for the next fiscal year. It is budgeted in arrears and takes away some of the volatility that generates this tax and the ability to estimate it. This tax, as provided in Assembly Bill No. 4 and Senate Bill No. 3, generates additional NPM tax in Fiscal Year 2021. The 75-cent rate will be a benefit to Fiscal Year 2022, not Fiscal Year 2021, as it will be for all other rates including counties, towns, cities, State General Fund and State Debt Rate.

SENATOR PICKARD:

When you talk about a consensus estimate, you named some who participated. Please remind me who is involved in coming up with those estimates.

MR. GUINDON:

Fiscal staff, the economists from the Budget Office and staff from DOT are responsible for administering the NPM tax. We reviewed data, including current price of gold, to determine where the production would be. The mines were required to provide information, including an estimate for 2020, which occurred in March 2020. Based on that information, and our own, we came up with the consensus estimate for calendar year 2020 of $62.7 million.

SENATOR PICKARD:

That answers my next question about receiving industry input; you obviously did. You mentioned the estimates. Do they include economic theory showing when profits go down, investments also go down? Was that factored into this?

MR. GUINDON:

The NPM tax is a difficult tax to forecast because, being a net one, and with the rates that can change, it affects the General Fund portion. We look at historical information related to deductions and gold prices, then use Kitco.com, an online site that tracks daily gold prices. We did this in June. It was halfway through 2020, and we knew where the gold prices were tracking. We then made assumptions going forward for the remainder of the calendar year. Based on information reported from the mines in their March 2020 report, we made assumptions for deductions.

We do not explicitly take some of the factors you are talking about into consideration, but they are implicitly in one's mind as a forecaster when making NPM estimates for any revenue source for whom we are producing estimates. It is sometimes hard to quantify. I cannot specifically show you where I explicitly accounted for that in this estimate. It is in your mind as a forecaster when trying to process all of the information in making an estimate.

SENATOR PICKARD:

That makes sense to me. I thought the rates would not be changing. Did I misunderstand that? The calculation for the tax is not changing, and we are only changing the amount of deductions allowed. Is that correct?

MR. GUINDON:

You are correct. The effect of Assembly Bill No. 4 is to change the amount of actual deductions a mining operation can subtract from their gross to determine their net. The provisions under NRS 362.140 require the net proceeds be divided by the gross proceeds to determine a ratio. That percentage is then walked through the graduated scale in that statutory section to determine the actual NPM tax rate. Year to year, even under current law, some of the mines have a tax rate that can vary because their net-to-gross ratio varies. The minimum rate in place is the Combined Property Tax. By changing the amount of net proceeds and the amount of deductions, the net-to-gross ratio could affect the tax rate. The 5 percent is the cap on the maximum rate a mining operation could end up paying.

SENATOR PICKARD:

The effective rate may change, but the calculation stays the same. Is that correct?

MR. GUINDON:

That is correct. There are no amendments to the provisions of NRS 362.140.

SENATOR PICKARD:
You mentioned between an 87- to 97-percent increase in what the State brings in. We are doubling the tax of this industry. Have we ever doubled a tax on an industry without notice to them or without gathering their input?

MR. GUINDON:
I do not recall there has ever been an increase like this, but that does not mean there was not one.

SENATOR PICKARD:
In your recollection, have we ever retroactively applied a tax to any industry?

MR. GUINDON:
I cannot recall. I am thinking of the Sessions where we made major tax changes or created new taxes. The Commerce Tax from the 78th Session comes to mind. We, however, based that tax on a fiscal year, not a calendar year, so I do not believe it qualifies as this made the bill effective July 1, after the conclusion of the Session.

MR. POWERS:
Applying a tax during the current taxable year is not a retroactive application of the tax. The taxpayer anticipates to owe a tax liability. Adjusting the deductions during the current tax year, which, in this case, would mean paying taxes for 2020 in 2021, is not retroactive application.

We have an 1867 Nevada example of this concerning NPM tax. In April 1867, the Legislature changed NPM tax. Originally, it was a standard deduction of $20 per ton of ore. In April 1867, the Legislature changed that to $18 per ton of ore if there was a roasting or smelting process. If a roasting or smelting process was used, a standard deduction was applied of $40 per ton of ore. The Manhattan Silver Mining Company challenged this as being an impermissible, retroactive tax under the *Nevada Constitution*. This went to the Nevada Supreme Court, who rejected the arguments of the mining company, saying applying changes to the collection of a tax, in the taxable year being dealt with, is not a retroactive application and not unconstitutional.

SENATOR PICKARD:
I understand the legal difference in terms of retroactive application in law. Has this been done in my lifetime? I am not as concerned about what happened in 1865. I understand the legal side as our decisions are precedential, and we sometimes look back that far.

Mr. Powers, you stated this could be challenged if the Legislature were unreasonable, or that deference would be given if the Legislature determines it to be reasonable. Mr. Guindon said this is an arbitrary figure. Is it the opinion of your office that it does not matter if it is an arbitrary number, as long as we deem it the correct number? Is that acceptable for the Supreme Court?

MR. POWERS:
Mr. Guindon did not answer the "arbitrary" question directly. He answered affirmatively that the Legislature could change the amount. Legislation from the 76th Session proposed a 40-percent change; this changes it to 60 percent. He was answering that the Legislature has that flexibility, not that this is an arbitrary number.

The number the Legislature chooses has to be reasonable, within the range of not being manifestly unjust. As long as the legislative choice of deduction amounts, whether itemized, standard or a combination of both, is reasonable, they will be entitled to deference by the Court. It will be upheld unless the Court finds it manifestly unjust. I do not believe Mr. Guindon agreed this is arbitrary. He stated there was flexibility, and in prior legislation, the Legislature proposed a different number.

SENATOR PICKARD:
Mr. Guindon, can you tell me the criteria used to derive the 60 percent? What calculations, rationale or analysis did you use to get to that 60 percent?

MR. GUINDON:
Mr. Powers' assessment is correct. I did not say the number was "arbitrary." I did not come up with the 60 percent; it was not my bill as legislative staff. I am here to present the provisions of

the bill, as drafted. The Legal Division was asked to draft this bill at 60 percent, and I was asked to do the analysis at 60 percent.

SENATOR PICKARD:

I do not want to put you on the spot, but I would like to know who came up with the number and what rationale was used.

When this bill was heard in the Assembly, there were many teachers who made public comments that we pass this bill to raise money for education. As I was reading the bill before we started this presentation, I did not see language that sends any of this money to education. Can you show me where that is please.

MR. POWERS:

The answer will turn on the amount of the net proceeds that go to local governments and affect local taxing districts. The portion going to the State goes to the State General Fund. It does not go into the State Distributive School Account. When deductions are reduced, the amount subject to the tax rate is increased, and it will be subject to local property taxes. A portion of that will go to the schools. From the local property tax assessments, schools will experience an increase of revenue due to this change in deductions. The portion that goes to the State will go only to the State General Fund. The Legislature is free to appropriate that money for schools, but as it stands, it will go to the State General Fund.

SENATOR PICKARD:

That is a critical point because we do not know what a future Legislature might do to appropriate it. Property taxes stay in the county in which they are collected. Is that correct?

MR. POWERS:

It depends on the tax collected. If it is truly a local assessment, it will stay in the local county where it is collected. When certain taxes are collected, local governments act as collectors of State taxes and sends a portion to the State.

SENATOR PICKARD:

That makes sense to me. The estimates are based on the price of gold. We have many other minerals. Were these rates spread out across the different materials mined in Nevada, or did we peg this to gold?

MR. GUINDON:

When trying to estimate NPM tax, the model Fiscal staff typically uses is comparable to DOT and the Budget Office and principally concentrates on gold and silver. These generate approximately 96 to 97 percent versus all of the other types of mining. We look at the price of gold and the production of gold and silver to estimate the General Fund tax amount gold and silver will generate. We roll all of the other types of mining into an "all other" category and estimate the remaining 3 or 4 percent. As a forecaster, I will attempt to hit the 96- or 97-percent target versus trying to hit the 3- or 4-percent target.

SENATOR PICKARD:

How do we protect the less profitable mines, those not mining gold and silver, from becoming negative if we push a tax built on the gold and silver model? Are we not crowding out the small operations that do not develop a lot of gold or silver? Does this bill push out the competition, the smaller outfits?

MR. GUINDON:

Do you mean competition within a class, within gold and silver? Those mining dolomite or other minerals are not in competition with gold and silver. The NPM tax in statute treats all taxpayers the same, and caps it out at 60 percent. They will calculate gross based on the mineral being extracted and the price received. They will next take the allowed deductions, calculate their net and apply the tax.

Can it have economic effects on an industry? Yes. Do I know what those will be? No. They have different elements based on the markets they are in, the mineral they are mining and the demand. You are correct in that other competitors could also be out there supplying that product.

MR. POWERS:

This bill is based on existing statutory structure in NRS Chapter 362. There is no current differentiation between the type of mineral being extracted and how the rates are applied. That is a statutory decision not required by the *Nevada Constitution*. Under Article 10, Section 1, the Uniform and Equal Taxation and Assessment clause applies to most properties so there can be no deviation between the types of properties unless there is a specific constitutional exception. The Uniform and Equal Taxation and Assessment clause does not apply to NPM tax because NPM is under Article 10, Section 5. When the amendment was proposed, it was to remove mining and net proceeds from the Uniform and Equal Taxation and Assessment clause. In this legislation, the Legislature could distinguish between gold, silver, other precious metals and other types of mining. You would not have to have the same deductions for every mining operation. You could choose what operations get which type of deductions, as long as there is a rational basis for making the distinction and a reasonable level of disparity between the types of deductions for the types on minerals involved.

SENATOR PICKARD:

That helps explain the "rational basis" piece.

SENATOR GOICOECHEA:

I am surprised the average effective tax rate is at 4.95 percent. I did not think it would be that close. The cap is if a mine does not generate over $4 million. The effective rate is something like 2 percent and then changes. Please walk us through that.

MR. GUINDON:

Under the tax rate provisions in statute, the rate is 2 percent if your net-to-gross percentage is 10 percent. If it is between 10 percent and 18 percent, it is 2.5 percent. If it is between 18 percent and 26 percent, it is 3 percent. If it is between 26 percent and 34 percent, it is 3.5 percent. If it is between 34 percent and 42 percent, it is 4 percent. If it is between 42 percent and 50 percent, it is 4.5 percent tax rate. If the net-to-gross ratio is 50 percent or more, the mine would be at the maximum of 5 percent. If actual net proceeds exceed $4 million, you are at the 5-percent rate.

SENATOR GOICOECHEA:

There is a difference. If you are in a particular industry, or mining a particular product with a lower return, there is flexibility regarding rate. Given the 103 mines in the State, I would have thought the average rate would be less than 4.95 percent. Agricultural producers would not be generating the $4-million cap to take them to the 5-percent rate. Is there an adjustment for things like gypsum or aggregate that have a lesser return? It seems they would pull the average rate down.

MR. GUINDON:

I walked through the brackets, but the minimum rate is the Combined Property Tax rate; this exceeds the rate coming out of the brackets. As an example, if a mine is in the 10- to 18-percent net-to-gross ratio, their rate should be 2.5 percent. If the Combined Property Tax rate is 3 percent, then the tax rate will be the 3 percent. You can see the nuances of this tax as you start looking at different types of mining other than gold and silver that occur in the counties. You must look at not only the net-to-gross ratio but also the Combined Property Tax they may have in place.

It appears the average effective tax rate is relatively high. Gold and silver are providing the majority of the tax being paid. The majority of those taxpayers are at the 5-percent maximum because either the net-to-gross ratio was 50 percent or higher, or they have more than $4 million in net proceeds. When 90 percent or more of the market is at that 5-percent rate, you get the average statewide effective rate of 4.95 percent. They are swamping the others who could have lower effective tax rates.

SENATOR GOICOECHEA:

Technically, the average effective tax rate in most cases starts at the .364 statutory cap. Most counties and cities are at that rate. It is not a big margin unless you are in a smaller, rural county with a lesser rate.

MR. GUINDON:
The maximum Combined Property Tax rate that can be in play is the .364. In several tax districts where mines exist, they are not at the maximum rate. They have a lower rate imposed as the combined rate. This may be due to the effect of the net proceeds in their tax district which allows them to have a lower rate. Several of these districts may have a rate that is lower as a Combined Property Tax rate than the .364 cap.

SENATOR GOICOECHEA:
I am familiar with the rate in Eureka County.

SENATOR KIECKHEFER:
The number of operators under the 5-percent rate strikes me. Do you have a breakdown as to how many operators are below the 5-percent rate?

MR. GUINDON:
I do not have that information readily available to me, now, tonight, but I can compile it.

SENATOR KIECKHEFER:
I would appreciate that. The policy you discussed, with the step-up tax rate based on gross-to-yield percentage, seems intended to incentivize mining companies to get mines into production that are more difficult or expensive to produce. Is that the intent of the policy, or is there a policy objective behind giving a lower tax rate to a company that produces minerals more difficult to produce?

MR. GUINDON:
Looking at this like an economist, it is somewhat like a progressive tax-rate schedule. As the net-to-gross ratio increases, there is higher net in relation to deductions. This is similar to a progressive income tax in that as you have more income, you walk up into the income brackets. Here, as you have a higher net-to-gross ratio, you are walking up into the tax brackets. The General Fund is only getting money when the NPM rate imposed is greater than the Combined Property Tax rate.

SENATOR CANNIZZARO:
We will now open the hearing to those in support of Assembly Bill No. 4.

CHRISTINE SAUNDERS (Policy Director, Progressive Leadership Alliance of Nevada):
The Progressive Leadership Alliance of Nevada (PLAN) is in strong support of Assembly Bill No. 4. For the past two decades, PLAN has been calling on this Body to hold the mining industry accountable. Many times this past week, you have heard we need real revenue reform, such as taxing the mines, rather than balancing the budget on the backs of working families, children and Nevada's most vulnerable. Any chance to raise new revenue is a chance to change the programs you cut. You heard the overwhelming testimony in favor of this bill given earlier tonight. Many current members of this Body, on both sides of the aisle, have voted to limit deductions before. Nevadans, and our children, are counting on you to step up again; listen to them. It is time for long-term solutions that put Nevada's revenue system on the right track. It is time to make mining pay their fair share. I urge you to vote "yes."

ALEX GOSF:
A State Senator once told me the job of a legislator is like walking on the beach and seeing all the starfish you know will perish if they are left out there. As a legislator, you have the ability to pick one up and throw it back into the ocean. You understand you cannot save them all, but you do your best to save as many as you can. This pandemic has brought many Nevadans unprecedented pain and suffering. As citizen-legislators, I am sure you have experienced some of the pain and suffering out there in your own lives and communities. This bill gives you an opportunity to throw one of those starfish back into the ocean and ensure a child or parent has the opportunity for which they will never be able to thank you. Many people may not be up at 1:00 a.m. to hear this and may not know your names. I know you do not do this for fame or glory, but this vote will allow you to save one family. Some of you have many reasons to vote against

this bill, but all you need is one reason to vote for it. I implore you to find that one reason and support this bill.

LAURA DEITSCH:

I am strongly in favor of Assembly Bill No. 4. It is high time for mining to pay its fair share. I ask the Legislature to look out for the entire State of Nevada and make this fairer for everyone.

DEXTER LIM (Sunrise Movement, Las Vegas, Nevada Environmental Justice Coalition):

We stand in staunch support of Assembly Bill No. 4. We, the public, keep reiterating the need for mines to pay their fair share. We raised the issue when it was unpopular, when you would not entertain discussion on it. We have raised this issue often. Nevada is impacted socially, financially and environmentally by the extractive and capitalistic avarice of the mining corporations. What many fail to recognize is that the mines need us. These are Nevada lands and Nevada resources. Entities, such as mines, disturb and pillage Nevada and must give their … (unintelligible statement) … to Nevadan communities. This is not a matter of partisanship; it is a matter of equality. Although this bill does not take us all the way there, it is still forward momentum. I ask you to be bold, stand for your constituents and pass this bill today.

STELLA KERR:

I support Assembly Bill No. 4. What I am hearing disappoints me. This bill is long overdue and needs to be passed. This has been talked about since I was a child and needs to pass. This will bring revenue to our State. There is no reason to vote against this bill unless you are for corporations and against Nevadans. You can be part of a historic change that will help our State. During this financial crisis, take leadership and move our State forward.

JENNIFER CANTLEY (Nevada Environmental Justice Coalition):

I am a proud, environmental activist for climate justice. I am thankful for those staying up and listening to this. It is time to tax the mining companies who have made billions of dollars off of Nevadans. These people do not even live in our State. It is time to protect those who do not have money … (unintelligible statement) … and tax those who have the money. I fully support Assembly Bill No. 4.

CHRISTI CABRERA (Director, Policy and Advocacy, Nevada Conservation League):

We support Assembly Bill No. 4. It is time the mining industry pays their fair share. Nevada's landscape is littered with abandoned and decommissioned mines. Mining should not continue to receive excessive deductions, including those for reclamation, to clean up the messes they make on our land. We urge your support of this bill.

RYAN BROWN:

I strongly favor Assembly Bill No. 4. As a small business owner, and coming from deeply affected industries at this dire time, this bill gives us the opportunity to hold the mining industry accountable. It must pay its fair share to help raise revenue for education and healthcare. It sends a strong message when we keep this business accountable.

KIMBERLY NULL:

I advocate for victims of violence against women and children. Nevada historically ranks high in statistics related to domestic violence, sexual assault and sex trafficking, yet we have the least State-provided resources for victims and providers. The pandemic has made the rate of domestic violence and child abuse get even higher than it already was in our State. We have no money for victims, no funds coming in and no resources available. We need any help we can get to service these individuals. Any revenue would be beneficial, but obtaining revenues come from a readily available resource ensures funds will get to these victims. I urge your support of Assembly Bill No. 4.

JACKIE CHIAKULAS:

I echo the callers before me; this is finally a step in the right direction. Please vote in favor of Assembly Bill No. 4. You represent the people of Nevada, and we have been calling for this for a decade. Please vote "yes" on Assembly Bill No. 4.

VERA MILLER:

I echo what Christi said; we should not be balancing the budget off of the backs of education, healthcare and families. We should be taxing corporations. We should be raising revenue. We should be taxing mining because of all of the things they take from our land and our people. This is not okay. If we are desperately looking for avenues to save lives in this crisis, I hope you vote in favor of this bill. It is an avenue. The more we tax here, the more we will be able support the people of our State.

CYNTHIA MOORE (Environmental Justice Coalition):

We support Assembly Bill No. 4. The budget has repeatedly been balanced on the back of working families. It is time to look for other solutions, and this bill is a step in the right direction. Many have said this bill will end mining; I ask, how? Our State has important minerals, and they are the product that has made companies profitable. Where else are these companies to go? It is time for mining to step up and pay their fair share. I urge you to set aside partisanship and put Nevada families first. Please vote "yes" on this bill.

ERIC JENG (Deputy Director, One APIA Nevada):

We advocate for the Asian and Pacific Islander communities in Nevada. We urge you to vote in favor of this bill. It is a good bill and a step in the right direction. We have seen many hardworking families in Nevada struggle to make ends meet during this pandemic. Too many essential public services … (unintelligible statement). There are too many holes in our healthcare and education, and now it is further being cut. The largest mining executives and operators bring in tens of millions of dollars. (Unintelligible statement) … chairman cashed in $50 million worth stock. That is how profitable they are. The mines will be okay. It is time for them to pay their fair share of taxes. We need all of the help we can get. I urge you to vote in favor of Assembly Bill No. 4.

MARIA-TERESA LIEBERMANN-PARRAGA (Deputy Director, Battle Born Progress):

I am representing people like my family, my mother and others who have been struggling in this difficult time. I am pleading with all Legislators listening to ask yourselves on which side will you stand? Will you side with the people, small business owners, children who need well-funded schools and public employees who have been giving their lives to the State? Will you side with an industry that has brought jobs, but has not paid its fair share since Nevada's inception? What are you Legislators going to say to small business owners who are struggling now? They cannot take the deductions mining can. What will you say to them if this does not pass? I hope you tell them you did all that you could and voted in favor of Assembly Bill No. 4. I ask you to vote in favor of this bill.

ANNA PEREZ-MCKAY:

I am in favor of Assembly Bill No. 4. Even considering putting these cuts for the coronavirus onto working families and children is unacceptable. It horrifies me there is even a question whether the State values children and working families. I implore each of you to vote in favor of Assembly Bill No. 4 and for once make the mines pay their fair share. Please do not let these deficits fall on the people who need them most. The companies who have the least to lose can pay their small amount to support the people who have the most to lose. Please support this bill.

ERIKA MINABERRY:

I am testifying in favor of Assembly Bill No. 4. I am a fourth-generation Nevadan. My children are fifth-generation Nevadans. My grandparents worked in the mines and were, at that time, thankful to have a job opportunity. My family has remained a low-income family for the last four generations. As working-class people, we do not have the same incentives as people who work in corporations do. Expert testimony said to think about this as an economist would. I encourage you to do this. If these cuts go through, my family will not be able to make it here in Nevada. I hope you vote in favor of Assembly Bill No. 4.

MADELEINE WILLIAMS:

I support Assembly Bill No. 4. You may have received letters from mining associations objecting to the tax as a single-source tax. With record unemployment, most businesses are

suffering. The proposed bill still leaves the mines with over $50 million in cash liabilities they do not have to pay. The mines will be fine, but Nevadans will not if you do not take care of your constituents. It is your duty and responsibility to do so. Your sole purpose as Legislators is to do what is right for Nevadans.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):

Battle Born Progress is in full support of Assembly Bill No. 4. For the last few days, multitudes of Nevadans have been begging you to find additional revenue so working Nevadans and their families will not be the ones who bear the brunt of these budget cuts. This is a great first step.

Former Assemblywoman Peggy Pierce was a fierce advocate for justice. Introducing a bill based on her language is a bold step, and we expect to see legislation like this from all of our elected officials. To hear members of this Legislature say they did not know a bill like this was coming is nonsense. For nine days, people have been calling into both Chambers talking about this issue. Nevadans have been asking for this for decades. It is time for the Legislature to get this bill to the Governor's desk.

As a native Nevadan, I have seen cut after cut but never an attempt to raise revenue. We have heard testimony from crying, struggling mothers. Educators are begging you for help. Doctors and healthcare professionals worry about the health and wellbeing of our State. Everyone is and will suffer if you do not find the revenue to fill this shortfall. Many industries are struggling in the midst of this pandemic, but the mining companies are not. They do not feel Nevada's economic hardship. They must do right by those suffering in Nevada. We ask every member of this Body to come together, regardless of party, and vote in favor of Assembly Bill No. 4. This is a nonpartisan issue. This bill will begin to give Nevadans needed relief in these difficult times. Do the right thing for all of the hardworking Nevadans in this State.

Mining must pay for what they extract from our State, from our land. We should not have to beg elected officials to do the right thing. Nevadans are watching, even at 1:00 a.m. There is no excuse, and we will hold you accountable if you vote wrong tonight.

BAILEY WATKINS:

I am in favor of this bill. I am someone who went through public education in Nevada, and I have lived and worked here my whole life. Thank you for making sure we are funding things important to Nevada in order to maintain a strong community and for education. Please tax the mines. We need more revenue, and we all know it. Our kids cannot afford to have more money taken from education or healthcare. We cannot afford to take money from crucial community resources. Please vote in favor of this bill.

ELENA CELAPAZ:

Is considering taxing mines enough? I think we need to go all the way through with this. Education and healthcare should not be the first on the chopping block becoming Nevada's scapegoats during a global crisis. It is ineffective. It shows this Legislature does not care about the people it represents. If you care about us, please think about this and go all the way through.

OLIVIA PICCIRILLI-PLATTE:

I am a product of Nevada public schools, and I now work in public education in Nevada. If we return to school in the fall and put ourselves at risk, we should have more funding. The future of our children, who are also at risk, needs more funding as well. We need to tax mines. They come through and create environmental destruction. They do not do that much for the communities in which they exist and bleed them dry. We need to tax them.

BRIAN FROST:

I urge you to support Assembly Bill No. 4. For 150 years, mining has received special treatment relative to other industries in the State. It is past time that mining begins to pay its fair share. When funding is cut from K-12 education and an additional $25 million is taken from higher education, it is past time for a bill like Assembly Bill No. 4. Please support this bill and help our State move forward.

ARTURO GONZALES:

I am speaking for my family, especially those now unemployed due to the pandemic. It is ironic that this call is happening. I spent the last hour and a half talking to my sister about putting together her resume so she can look for work during this time. You now have the opportunity to give relief to Nevadans. I urge the Body to support Assembly Bill No. 4. My family would benefit from it, as would hundreds of thousands of other Nevadans. I went to school in a district where we could not enter some buildings because construction could not be completed. It is about time we spend our resources by investing in the community and schools; take from the places that can afford to give. I encourage you to vote in favor of Assembly Bill No. 4.

CECIA ALVARADO (Nevada State Director, Mi Familia Vota):

We strongly support Assembly Bill No. 4 and the groups working for decades to ensure mines pay their fair share. Nationally, our State ranks 45th in education and 31st in healthcare. Think of those who are saving lives. Think of our working families who are trying to figure out how to put food on the table. They are counting on you to advocate for them. Please support education and working families by voting in favor of this bill.

LALO MONTOYA (Political Director, Make the Road Nevada):

We support Assembly Bill No. 4. Our organization is made up of thousands of vibrant, beautiful, hardworking families who desperately need decisive action that will offer them dignity and the ability to care for themselves and their families. It is time for mining to pay its fair share. It is time for the mining industry to join the fight to save our State now, when other corporations and our workers are putting everything on the line to help our State pull through this crisis. Mining needs to pull their weight. Put an end to the tax deductions this Legislature has unfairly approved for years. We urge you to vote in favor of Assembly Bill No. 4.

KATHERINE LORENZO:

My husband, Arturo Gonzales, spoke earlier. As a community member, I support Assembly Bill No. 4. Our family is facing financial hardship, as you heard. I ask that you please tax mines. Our State is in dire need of financial resources.

AMBER SALGOUP:

I was born and raised in Reno. I am a concerned citizen, and, more importantly, a mother. My daughter is heading into seventh grade and has had countless struggles learning to read. At one point, while I was a single mother working low-wage jobs with a college education, I had to put her in outside tutoring so she could get the one-on-one support she needed. I would not have had to do this if our schools were properly funded.

I urge you to pass Assembly Bill No. 4. It is a start to fixing our broken revenue system. Please stop balancing the budget on the backs of our children and families. We cannot take it anymore. I thank you for your hard work. I am encouraged by Assembly Bill No. 4 because it signals a turning point for our State. Maybe we can get to a point where our children are more important than corporations and industries like mining.

INGRID LOPEZ:

We have a huge income inequality gap in Nevada. Nevada's lawmakers have ignored the working class. When our economy suffers, the working class is thrown under the bus time and time again. You ask for our votes to win reelection; therefore, I ask you to think of all the individuals who are struggling to put food on the table. Our families are vulnerable, and people are afraid of going back to work because they do not want to die. I urge you to vote "yes" on Assembly Bill No. 4 and create revenue for Nevadans, the people who elect you. Please vote in favor of Assembly Bill No. 4.

TAMEKA HENRY:

I am calling in support of Assembly Bill No. 4. We cannot continue to balance our budgets on the backs of children and education. Nevada needs the additional revenue.

SENATOR CANNIZZARO:

We will now open the hearing to those in opposition to Assembly Bill No. 4.

PAUL MORADKHAN (Senior Vice President, Las Vegas Chamber of Commerce):

The Las Vegas Chamber has several concerns about Assembly Bill No. 4 and cannot support this bill. COVID-19 has decimated Nevada's employers both large and small. It does not matter if you are in Las Vegas, Reno or Elko. Employers and employees are hurting because of the pandemic. The United States Chamber estimates that 24 percent of businesses will not survive this pandemic crisis. We have seen many businesses close, and they will not be reopening. COVID-19 has devastated employers and employees and has negatively affected our business communities.

In the last few decades, we have seen how relying on specific industry sectors make for a vulnerable and less diverse tax base. The Las Vegas Chamber of Commerce has a long-standing tradition to oppose industry-specific taxation. We urge you not to pass this tax increase during an economic crisis, one with no end in sight. If this bill passes, good paying jobs in the industry will be lost, directly impacting Nevada families and the communities that rely on these jobs. Sensible taxation should be broad-based. An industry-specific tax leads to volatility and uncertainty. The Las Vegas Chamber supports important services such as education and healthcare, but passing this without skillful and thoughtful analysis will leave our community without a stable base.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):

The Retail Association of Nevada is in strong opposition to Assembly Bill No. 4. We heard comments tonight requesting you do the right thing. In this case, the right thing would be a comprehensive plan that allows Nevada to meet its needs going forward. There are many flaws in the current tax system that, if corrected, would set Nevada and its political subdivisions on a path to fiscal solvency. During the 2019 Session, there was not a comprehensive discussion on taxes. This was a time when we found ourselves in the height of the business cycle with low unemployment and positive economic growth. Instead, a constitutional crisis confronts the Nevada business community.

It is unfortunate that during a time of great economic upheaval, it is thought a single industry can balance the budget. Not once, during this time, has the retail industry been asked to discuss a revenue plan that could restore the difficult cuts identified by this Body. Again, we are having a tax discussion, in the dead of night, designed not to be a comprehensive solution but rather another stopgap measure. Retail has seen tremendous changes in its supply issues over the last 120 days. Even the smaller actions have consequences downstream. Going after a single industry to put back some of these cuts is not going to provide the economic solution you are looking for and may hurt the communities mining is able to support. We urge this Body to take the time and think about a solution that does not attack a single industry. We stand in opposition to Assembly Bill No. 4 and urge you to do the same.

LILITH BARAN:

I support this bill. It is criminal that we are calling in at 1:30 a.m. to argue for schools and funding for proper education. I am a schoolteacher and mother as well as a union member and musician. I understand COVID-19 has had an economic impact that has affected everyone, including retail industries, but I have third and fifth grade students who can barely read. It is criminal we do not tax the mines, that are constantly and completely razing our beautiful Sierras and natural areas, while our children are sitting in classrooms without the pencils, books, instruments, paint or anything they need to be productive citizens in our State. Nevada is in the top 10 percent related to funding policing and mining, and in the bottom 10 percent for things like education. This is disgusting. We will only reap what we sow in this situation, and we will continue to see a huge wealth gap and economic disparity in our State. We will continue to be the laughingstock in our Country and continue to be 47th in education and 50th in mental-health services. You should each be ashamed for allowing us to get to this point. After 150 years, the strongest lobbying is for mining, and I do not know how you sleep at night.

ANN SILVER (Chief Executive Officer, Reno Sparks Chamber):

The Reno Sparks Chamber of Commerce has a long tradition of opposing any tax that singles out a specific industry. When our economy is facing the impact of the pandemic together, it is not the time to put a burden on one industry. The Reno Sparks Chamber proposes, instead, a lowering of the sales tax to stimulate spending by private citizens who would appreciate opportunities to

purchase larger ticket items, such as appliances and vehicles, at lower prices. Driving our economy forward is a responsibility shared by all of us and not something borne by singling out mining or any other business segment. We oppose Assembly Bill No. 4. You are working long hours to make decisions, but our Chamber asks that you do not go down the path of singling out one industry and doing what consumers can accomplish.

TYRE GRAY (President, Nevada Mining Association):

The Nevada Mining Association is comprised of over 550 members representing every link in the mining supply chain. I have been on the job for just over four months and am not used to the process nor am I a known entity to you in the Senate. At 3:15 p.m., I received a call about Assembly Bill No. 4. At no other time leading up to the Special Session, or during the Session, has my phone rang to discuss the contents of this bill.

Mining is one of Nevada's foundational industries with companies of all sizes. I do not know how this bill will affect all of my members, especially some of the small ones, except in a bad way. If we are discussing a revenue-specific tax, the revenue projection discussed in this bill ignores the simple fact that mining pays every tax any other business pays plus the industry-specific tax, NPM tax. Not once, not twice, but every time the State has called upon the mines to prepay, or discuss tax policy, the industry has been at the table. This time was no different, yet it was not until 3:15 p.m. yesterday that my phone rang. Mining is happy to be part of the solution, but it cannot be the only solution. A single industry tax is not the way to address the budget shortfall. The Nevada mining industry is opposed to Assembly Bill No. 4.

JENNEY SARTIN (Chief Executive Officer, Pahrump Chamber of Commerce, Lyon County):

We all recognize COVID-19 has left no person or industry untouched. I appreciate the need to address this budget deficit, but I have serious concerns about Assembly Bill No. 4 and the way it is written. This portion that assigns money to the General Fund is of great concern. I do not support the efforts to single out a specific industry. While I recognize the need for an equitable tax structure, I cannot support Assembly Bill No. 4 as written. I ask you to consider your actions.

SARAH ADLER (Charter School Association of Nevada):

On behalf of the Charter School Association of Nevada and advocates for public charter school options, we are in favor of Assembly Bill No. 4. The mining industry is beneficial to our State and has a proud history here. There are reasons for you legislators to carefully consider supporting this bill. The public charter school sector says "props" to the mining industry for stepping up for the prepayment, yet we further believe Assembly Bill No. 4 is essential. The need for revenue to educate the children of Nevada safely during this pandemic crisis is overwhelming. Senate Bill No. 3 on its own would not be enough. Public education needs revenue on an ongoing basis. Not all of the determination and grit we Nevadans pride ourselves with will make public education happen. It needs the funds Assembly Bill No. 4 will provide.

ARIA FLORES:

I support Assembly Bill No. 4. Born and raised in Nevada, I have grown to love my State to the core. This year, I cast my first primary election vote, and I will be voting in the general election as well. We need this revenue so we can continue being "Vegas Strong." Nevadans, who are struggling during this pandemic and uncertain time, need this revenue to invest in the future education of Nevada's next generation. I believe in our educational system and our great teachers. Everyone talks about funding and making sure our future, as fellow Nevadans, is safe and continues.

KAILEY BARNETT:

I am in favor of Assembly Bill No. 4. I insist mines pay their fair share and that the budget shortfalls caused by COVID-19 do not fall on the backs of children and working families or our educational system. I am a teacher, and Nevada has nationally ranked low in education for many years. I am a product of the Clark County School District and the Washoe County educational system. We need to fund schools at a higher level. COVID-19 has put Nevada in a fiscal crisis, and mining needs to contribute. According to the *Nevada Current* newspaper, nearly half of Nevada's gold mines have paid no taxes since 2016. They need to pay their fair share, and this should not be put on working families.

SENATOR CANNIZZARO:
We will now open the hearing to those neutral to Assembly Bill No. 4. Hearing none, we will close this Agenda.

Senator Harris moved to do pass Assembly Bill No. 4

Senator Scheible seconded the motion.

Motion carried. Senators Goicoechea, Hammond, Hansen, Hardy, Kieckhefer, Pickard, Seevers Gansert and Settelmeyer voted no.

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

SENATE IN SESSION

At 1:55 a.m.

President Marshall presiding.

Quorum present.

REPORTS OF COMMITTEE

Madam President:

Your Committee of the Whole, to which was referred Assembly Bill No. 4, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

NICOLE J. CANNIZZARO, *Chair*

GENERAL FILE AND THIRD READING

Assembly Bill No. 4.

Bill read third time.

Remarks by Senators Ohrenschall, Settelmeyer, Pickard, Hardy, Goicoechea, Cannizzaro and Hammond.

SENATOR OHRENSCHALL:
I rise in support of Assembly Bill No. 4 and urge this Body to support it and vote in the affirmative. Assembly Bill No. 4 has the potential to help our constituents who need it so desperately during these unprecedented times. When we concluded the regular Session last year, none of us expected a global pandemic would hit our State and Nation. None of us expected to see tourism suffer the way it has or to see the vital services our constituents rely upon suffer so greatly. Assembly Bill No. 4 has the potential to help our constituents, schoolchildren and all who rely on health and human services in this State as we have discussed these last nine days. This has been a difficult time. We have asked industry to come together and see what can be done to help.

This bill means a lot to me because I served during the 76th Session. My colleague and friend, the late, former Assemblywoman Peggy Pierce, sponsored a similar bill, Assembly Bill 428 of the 76th Session. She was passionate about helping our constituents and trying to see what could be done to further public-education and public-services goals. This bill is a testament to what Peggy fought for, and it will help our constituents. I urge its passage.

SENATOR SETTELMEYER:
Assembly Bill No. 4 began in the Assembly at 7 p.m. yesterday and here we are at 2:09 a.m. on day nine/ten of this Special Session. The public cannot be in the building, and we have members voting from locations in Clark County on this divisive issue.

This bill bothers me. Within our *Nevada Constitution*, we talk about "just evaluation." This bill seeks to raise the value on something to get more money. It is akin to selling someone a car for $10,000; they drive from San Francisco to Nevada to get the car, and you sell it to them. We are now going to retroactively go back and tell them they have to pay for the car to be transported to San Francisco, when we did not get the money from them. That seems improper.

This is an industry-specific tax; who is next? We heard testimony this is the first step. I am perplexed because my family has a long history of fighting mining. We had a lawsuit that ran for 58 years against the mining industry. It started out as farmers versus miners on a water war called the "Alpine Decree." I was here in the 78th Session and voted to take away deductions from mining. I have no problem looking at those deductions again, but to simply take a percentage away when they have not looked at this and have started businesses or new mines based on the old rule is not fair or right, especially in the middle of a pandemic. No state has raised taxes during this pandemic, at least so far.

SENATOR PICKARD:

I first saw Assembly Bill No. 4 at 11:30 p.m. I am not an expert in mining taxes, but I have made some observations. When Mr. Guindon presented the bill and exhibits, it was obvious this is anything but a simple process. I do not know how anyone who does not live this daily could pretend to understand it. The bill, in its current form, does not appear to have been presented to industry nor were they given adequate notice. A bill cannot be reviewed until it is read. This bill will double the tax on mines. They will have to pay retroactively. The mines had no understanding of what they had to do financially. Any decisions they have made are moot. Now, mines will have to set aside twice the tax, or at least the differential, to pay this. They were given no notice.

I voted for Assembly Bill No. 4 out of Committee. We need to do more, particularly for education. I am concerned about the legal analysis of this bill. Clearly, the cap is not based on any rational basis; they could not articulate why they set this rate. That is a problem for me. Mining is, by constitutional fiat, a different beast and is already treated differently. I do not have a problem with that. What concerns me most; many people feel this tax will be a boon to education. In doing some math, it appears between $10 million and $15 million will be going to education with the rest going to the General Fund. I might be wrong on the numbers, but it is the order of magnitude.

As confirmed by our Legal Department, there are no assurances in Assembly Bill No. 4 this money is earmarked, destined to go to education. This means much of the testimony we heard from those who suggested this is a boon to education is incorrect, and they have been misinformed. I do not know if it was a mistake, the lateness of the hour or why, but by the end of the testimony, they thought this was to help education. There is nothing in the bill but the property tax, and only two-thirds of the money will go outside the county in which the tax is raised. There is no assurance in the language of the bill that this money will go to education. I would have been a strong "yes" if this is going to education, but it is not; it will fund other things. They say past is prologue. We watched this Body strip permanent funding money out of education and replace it with one-shots. I have no reason to believe this effort will be any different.

I voted in favor of Assembly Bill No. 4 out of Committee, but because it is a complex beast, there is no way for us to know what is really going to be done with the money. No one has said what will be done with the money. It is complex, and we have had little time to digest it. I cannot comfortably vote for passage of this bill. I urge my colleagues to push the pause button. We should revisit this in the upcoming Session that is only a couple of months away. We should look at this when we have time to consider all of the points.

SENATOR HARDY:

This is about policies, procedures and people. I am grateful for leadership recognizing this is an increase in taxes and, thus, requires a two-thirds vote for approval. People can understand we have differences of opinion on policies. They like it when we agree with them, and they do not like it when we disagree with them. They really do not like it when we use procedures to limit access to the process of providing input. They do not like it when we do it in the dark, behind closed doors, without time to be involved and make it problematic to have influence. My colleague from Senate District 19 made an apropos observation saying, "In the West, when wearing a mask in the night demanding money, it doesn't seem right."

The mining industry is at risk from this bill, and other industries may feel nervous about what is going to happen to them next year. An alternative budget was presented that did not require a new State revenue creation but used other sources and adjustments. It would even give teachers willing to be in the classroom a well-deserved raise.

In the presentation and testimony tonight, we have heard it said this will cause a rate increase for some. We have not heard how this money will be tied to a specific budget item. We have not

heard a specific plan to use the money, only that we need more. We have not heard how much actually will go to the schools in Clark County, only that some will go to the schools. We have heard that enough to know we do not know the effects. This happened in the wee hours of the night and without input from those affected.

We were reminded there is a differentiation of tax rate caps based on a quasi-way to decide the worth of the ore. We heard a simple sentence from our well-qualified tax expert regarding the 5-percent rate. He stated he did not have that information available tonight. This is a sad way to process a policy that is both complicated and consequential.

SENATOR GOICOECHEA:

It is no secret I am an advocate for rural Nevada. I may be the only one in this room who has been employed by a mine. Assembly Bill No. 4 will increase local revenues, but it will be for the short term. Some of the smaller projects will be stopped. Mines are capital intensive. It takes two to three years to develop a mine before an ounce of product can be pulled out. I am not sure how this will work; you cannot carry it with you.

How many of you in this room file a 1040a income tax long form? How many of you are prepared to write off 40 percent of your legitimate deductions? I do not see many nods. I do not want to do it. That is no different from what we are asking the mining companies in this State to do. It is against the Internal Revenue Service Code, and I do not believe we can do it. It is not fair or right. Here we are at 2:00 a.m. on a bill that started ten hours ago. Bring this back to the regular Session where it belongs. Bring it to an open session where we can have input.

Net proceeds is a heavy lift. I have been dealing with it since the early 1990s when I was a county commissioner. It is hard, and it is difficult to get it right. I am not going to say we have it right, but I commit to you that I will work on it. We need to vet it first.

SENATOR CANNIZZARO:

I appreciate it is late, and everyone is tired. This last week has been full of difficult decisions that can feel impossible. It is impossible to sit and listen to the idea we are facing an economic downturn and talk about how we have to cut education and healthcare in the State of Nevada to balance the budget. What Assembly Bill No. 4 proposes will not fill a $1.2-billion shortfall in State revenue, neither will scraping the bottom of accounts to find additional money to save some critical program. The prospect that we engage in this exercise and it should be good enough gives a false sense of hope. Comments were made that if these funds were earmarked for education or if the process had been given more time, members would vote in favor of this bill. It was mentioned that if we had a second to look at this, maybe the decision would be different.

We are trying to put a value-based decision on the things we are discussing. We say things like education is important in the State and put them at the forefront of our discussions. At the end of the last Session, there was a bill earmarked for education. At the time, we did not see the need for more money because there was enough in the budget. We did not need to have that conversation because of process. Here we are now, talking about cutting education. There is no easy answer to this. There is not $1.2 billion hiding in the Nevada budget to fill that hole.

We cannot say that about the future; the Legislature would use revenue funds from Assembly Bill No. 4 to fund education, but that is what we do in every bill that passes out of this Legislature. You cannot bind the hands of a future Legislature, but we could make the decision to take revenue and put it to education. That is what this Body can do.

At some point, it has to matter enough to stop making excuses about particular bills, such as the need to earmark for education specifically in order for it to be not a problem. Since there is no sentence in this bill that states it goes to education, we cannot make that decision. We can make a subsequent decision this money should go to education; that should not be hard. What should be hard is listening to testimony from real people who rely on the education system to educate their kids and who rely on services in the State of Nevada to ensure they can get proper healthcare. These people work for an honest living and live day-to-day. Listening to that should be hard. This should not be hard. At some point, there needs to be a compelling reason for all of us to vote for Nevadans.

We are sitting in an empty Chamber. There are no people sitting in the gallery or standing in the hallway. We are separated from our colleagues by plexiglass partitions and masks. If a global pandemic has not shed light in the most apparent way, I do not know what else will shine it. This

has to, at some point, matter. It has to matter enough to have the conversation, and it has to matter enough for us to say this is something we want to do. The 5 percent in the *Nevada Constitution* is probably an arbitrary number. I cannot find a specific piece to validate that. If our arbitrary number should be higher, we can have that conversation. Instead, it is stated it is "arbitrary." That feels like another reason, more justification to not make the decision.

The idea this bill was presented to you late, this has happened in this Body at all hours before. It has happened at the end of Legislative Sessions, including a decision to talk about taking money out of public education three minutes before the end of a Legislative Session.

This bill has not just been introduced in the last three minutes, and no process was evaded. We are short on time, but we are trying to close a budget. We have heard this topic in every public comment over the last nine days. The hole in the budget has been a topic of conversation for the last month. Ways to address that problem would have to have been at the forefront of everyone on this Body's mind, or I am not sure what we are doing here. The idea this is a shock and cannot be addressed is not a compelling reason for me. Many other cities and states have talked about taxes. Now is not the time to look the other way in this situation.

There is money in this bill that specifically would go to schools. The rest of it we can make a priority. That should be enough of a compelling reason. The testimony is a compelling reason. The reason why I sit in this Body, the daughter of a bartender and a waitress who were just trying to make it by every day. They told me if I went to school and worked hard, I would have opportunities to do whatever I wanted to do. I am the first person in my family to graduate from public school and law school. I received a great education in the Great State of Nevada. This matters to me as I sit in this Body.

It is compelling to say this is something we should do. It will not solve the problem. We need to continue conversations about priorities, values and how we can fix this. If this is not enough of a compelling situation, we face of such magnitude to say, "yes, we value this," then I do not know what is. If this is not an answer to the problem, I welcome conversation. This is a way we can say we want to make fewer cuts to education. We can make those decisions. I urge my colleagues to vote "yes" on Assembly Bill No. 4 as one of the many solutions we have before us to address an incredible problem.

SENATOR HAMMOND:

My colleagues have already made some of the points I would make. We just heard an impassioned plea on behalf of the bill. One of the callers in favor of the bill asked us to think about what we are doing and how we can support small businesses. My thoughts wrap around that question because it stuck in my mind, and I have been dwelling on it ever since.

Much of our discussion tonight, and conversations I have had since yesterday, centered on the process. There is a certain process. There are times things have moved faster than we would like or can keep up with, but I have never seen something like this. We have been talking about this idea in conversations, and people have had questions and comments about the need to tax more in mining. We do not know what the discussion should center around until there is bill language, and the language in this bill was presented to us late. To the small businesses who would ask what I have done, I remind them I am not about to start taxing or change tax policy in the middle of the night, not on mining. I certainly will not do so in the future. There is a time to do this.

I was here in the 77th Session when a group of us brought up the idea of taxing mining. We categorized some of the funding and directed funding to education. We had a specific purpose for asking for more money from gold mines and saw how it could specifically impact education. Some of you in this Body were here during that Session. After that proposal was made, we heard nothing. We brought it early enough in that Session to give people a chance to talk about it and move forward.

I have been here during Sessions where bills on tax and tax policy were brought late, with no time for discussion. This is not easy stuff. To spring this language on people at the last second subverts the idea of a process where things are discussed, as we have been doing since the beginning of this Session. Colleagues on both sides of the aisle have been in discussions about where the money is located, how we can get more, where and when we get money and what add-backs should be made. We had this discussion and released our ideas to the public so they

could see where money should be put back. The time to talk about this is during the next regular Legislative Session.

The original bill would not have money collected until after the next year, so it would not help us to fill the budget hole we have. To all who called earlier, the language does not lie. This does not specifically go to education. It is not designed to fill a hole right now. It is more political than anything is and designed to see where we are on this idea.

I cannot support anything like Assembly Bill No. 4. The last quarter of the school year, many families had children at home working on computers. They were trying to help them while they were home. They saw their children were not progressing. This is not the fault of educators. It is because of circumstance. Those parents had no alternative. The prospect of finding a way to educate their children this fall is dismal. Many families are looking at their students staying at home again. Parents would love to find a different way to educate their children if they do not have confidence the public education system could deliver that education. I am not in favor of adding any new taxes to our State unless we have more choice for parents. We need them to be able to have a hand in their children's education especially in circumstances we saw in the spring and will probably see this fall. We need to give more parents more opportunities to ensure their child receives an education. That is where I now stand.

Roll call on Assembly Bill No. 4:

YEAS—13.

NAYS—Goicoechea, Hammond, Hansen, Hardy, Kieckhefer, Pickard, Seevers Gansert, Settelmeyer—8.

Assembly Bill No. 4 having failed to receive a two-thirds majority, Madam President declared it lost.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bill No. 4; Assembly Joint Resolution No. 1.

Senator Cannizzaro moved that the Senate adjourn until Saturday, July 18, 2020, at 12:00 p.m.

Motion carried.

Senate adjourned at 2:26 a.m.

Approved:

KATE MARSHALL
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate