

Amendment No. 893

Senate Amendment to Senate Bill No. 493 First Reprint (BDR 32-1152)

Proposed by: Senate Committee on Revenue

Amendment Box: Replaces Amendment No. 771.

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of S.B. 493 (§ 12.5).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SJC/BJE



Date: 6/3/2011

S.B. No. 493—Creates the Mining Oversight and Accountability Commission.
(BDR 32-1152)



SENATE BILL NO. 493—COMMITTEE ON REVENUE

MARCH 28, 2011

Referred to Committee on Revenue

SUMMARY—Creates the Mining Oversight and Accountability Commission ~~and~~ and revises the provisions governing the calculation of the net proceeds of mines. (BDR 32-1152)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to mining; creating the Mining Oversight and Accountability Commission and establishing its membership, powers and duties; revising provisions governing the calculation of net proceeds from certain mining operations conducted in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law does not provide for a single administrative body to oversee the activities of the various state agencies that have responsibility for the taxation, operation, safety and environmental regulation of mines and mining in this State. **Section 5** of this bill creates the Mining Oversight and Accountability Commission. Two members of the Commission are appointed by the Governor. The Majority Leader of the Senate and the Speaker of the Assembly each appoint two additional members. In the first biennium, the seventh member is appointed by the Minority Leader of the Senate. In the next biennium, the seventh member is appointed by the Minority Leader of the Assembly. The appointment continues to alternate each biennium thereafter. **Section 7** of this bill requires the Commission to ~~exercise plenary oversight of~~ provide oversight of compliance with Nevada law relating to the activities of each state agency or political subdivision ~~in connection~~ with respect to the taxation, operation, safety and environmental regulation of mines and mining in this State. **Section 7** also identifies particular state entities that are subject to ~~its oversight in connection~~ the supervision of the Commission with respect to their activities related to mines and mining: (1) the Nevada Tax Commission and the Department of Taxation in the taxation of the net proceeds of minerals; (2) the Division of Industrial Relations of the Department of Business and Industry concerning the safe and healthful working conditions at mines; (3) the Commission on Mineral Resources and the Division of Minerals of the Commission; (4) the Bureau of Mines and Geology of the State of Nevada; and (5) the Division of Environmental Protection of the State Department of Conservation and Natural Resources in its activities concerning the reclamation of land used in mining. **Sections 8 and 13-16** of this bill establish certain reports and other information that those entities are required to provide to the Commission. **Section 11** of this bill authorizes the Commission to request the Legislative Commission to direct the Legislative Auditor to provide for a special audit or investigation of the activities of any state agency, board, bureau, commission or political subdivision in connection with the taxation, operation, safety and environmental regulation of mines and mining in this State. **Section 12** of this bill provides that certain regulations of the Nevada Tax

Commission, Administrator of the Division of Industrial Relations, ~~for the Department of Business and Industry.~~ Commission on Mineral Resources and the State Environmental Commission concerning mines and mining are not effective unless they are approved by the Commission. Section 12.5 of this bill revises provisions governing the calculation of net proceeds from certain mining operations conducted in this State.

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

Section 1. Chapter 362 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12 inclusive, of this act.

Sec. 2. *As used in sections 2 to 12, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Chair” means the Chair of the Commission.*

Sec. 4. *“Commission” means the Mining Oversight and Accountability Commission created by section 5 of this act.*

Sec. 5. 1. *There is hereby created the Mining Oversight and Accountability Commission consisting of seven members appointed as follows:*

(a) Two members appointed by the Governor;

(b) Two members appointed by the Majority Leader of the Senate;

(c) Two members appointed by the Speaker of the Assembly; and

(d) One member appointed by the Minority Leader of the Senate or the Minority Leader of the Assembly. The appointment must alternate each biennium between the Houses of the Legislature.

2. *The Governor, Majority Leader of the Senate, Speaker of the Assembly, Minority Leader of the Senate and Minority Leader of the Assembly shall confer before making an appointment to ensure that:*

(a) Not more than two of the members are appointed from any one county in this State; and

(b) Not more than two of the members have a direct or indirect financial interest in the mining industry or are related by blood or marriage to a person who has such an interest.

3. *Each member of the Commission serves for a term of 2 years.*

4. *A vacancy on the Commission must be filled by the appointing authority in the same manner as the original appointment.*

Sec. 6. 1. *The Commission shall elect one of its members as Chair and another as Vice Chair, who shall serve for a term of 1 year or until their successors are elected and qualified.*

2. *The Commission shall meet at least once each calendar quarter and may meet at other times on the call of the Chair or a majority of its members.*

3. *A majority of the members of the Commission constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Commission.*

4. *While engaged in the business of the Commission, each member of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.*

5. *The Executive Director of the Department shall assign employees of the Department to provide such technical, clerical and operational assistance to the Commission as the functions and operations of the Commission may require.*

Sec. 7. *Notwithstanding any other provision of law, the Commission shall ~~exercise plenary oversight of~~ provide oversight of compliance with Nevada law*

relating to the activities of each state agency, board, bureau, commission, department, division or political subdivision ~~in connection~~ with respect to the taxation, operation, safety and environmental regulation of mines and mining in this State, including, without limitation, the activities of:

1. The Nevada Tax Commission and the Department of Taxation in the taxation of the net proceeds of minerals pursuant to this chapter and Section 5 of Article 10 of the Nevada Constitution.

2. The Division of Industrial Relations of the Department of Business and Industry in administering the provisions of chapter 512 of NRS concerning the safe and healthful working conditions at mines.

3. The Commission on Mineral Resources and the Division of Minerals of the Commission in the administration of the provisions of chapters 513 and 522 of NRS concerning the conduct of mining operations and operations for the production of oil, gas and geothermal energy in the State.

4. The Bureau of Mines and Geology of the State of Nevada in the Public Service Division of the Nevada System of Higher Education in its administration of the provisions of chapter 514 of NRS.

5. The Division of Environmental Protection of the State Department of Conservation and Natural Resources in its administration of the provisions of chapter 519A of NRS concerning the reclamation of mined land, areas of exploration and former areas of mining or exploration.

Sec. 8. In addition to any other information requested by the Commission pursuant to section 9 of this act:

1. The Administrator of the Division of Industrial Relations of the Department of Business and Industry shall submit to the Commission at its first regular meeting in each calendar year the report that is required pursuant to NRS 512.140 concerning the functions of the Administrator under chapter 512 of NRS concerning the creation and maintenance of safe and healthful working conditions at mines in this State during the immediately preceding calendar year.

2. The Department of Taxation shall submit to the Commission at the second regular meeting of the Commission in each calendar year:

(a) An audit program identifying each mining operator or other person who is required to file a statement concerning the extraction of minerals in this State pursuant to NRS 362.100 to 362.240, inclusive, that the Department intends to audit during the immediately following calendar year;

(b) A report of the results of each audit of a mining operator or other person completed by the Department during the immediately preceding calendar year; and

(c) A report of the status of each audit of a mining operator or other person that is in process at the time of the report.

3. The Division of Environmental Protection of the State Department of Conservation and Natural Resources shall submit to the Commission at its third regular meeting in each calendar year a report concerning the Division's activities concerning the reclamation of mined lands, areas of exploration and former areas of mining or exploration during the immediately preceding calendar year, including, without limitation, an accounting of the amounts of fees collected for permits issued by the Division and any fines imposed by the Division.

Sec. 9. 1. In conducting the investigations and hearings of the Commission:

(a) The Chair or any member designated by the Chair may administer oaths.

1 (b) The Chair may cause the deposition of witnesses, residing either within
2 or outside of the State, to be taken in the manner prescribed by rule of court for
3 taking depositions in civil actions in the district courts.

4 (c) The Chair may issue subpoenas to compel the attendance of witnesses
5 and the production of books and papers.

6 2. If any witness refuses to attend or testify or produce any books and
7 papers as required by the subpoena, the Chair may report to the district court by
8 petition, setting forth that:

9 (a) Due notice has been given of the time and place of attendance of the
10 witness or the production of the books and papers;

11 (b) The witness has been subpoenaed by the Commission pursuant to this
12 section; and

13 (c) The witness has failed or refused to attend or produce the books and
14 papers required by the subpoena before the Commission which is named in the
15 subpoena, or has refused to answer questions propounded to the witness,

16 and asking for an order of the court compelling the witness to attend and
17 testify or produce the books and papers before the Commission.

18 3. Upon such a petition, the court shall enter an order directing the witness
19 to appear before the court at a time and place to be fixed by the court in its order,
20 the time to be not more than 10 days after the date of the order, and to show
21 cause why the witness has not attended or testified or produced the books or
22 papers before the Commission. A certified copy of the order must be served upon
23 the witness.

24 4. If it appears to the court that the subpoena was regularly issued by the
25 Commission, the court shall enter an order that the witness appear before the
26 Commission at the time and place fixed in the order and testify or produce the
27 required books or papers. Failure to obey the order constitutes contempt of court.

28 Sec. 10. 1. Each witness who appears before the Commission by its order,
29 except a state officer or employee, is entitled to receive for such attendance the
30 fees and mileage provided for witnesses in civil cases in the courts of record of
31 this State.

32 2. The fees and mileage must be audited and paid upon the presentation of
33 proper claims sworn to by the witness and approved by the Chair of the
34 Commission.

35 Sec. 11. 1. The Commission may submit a request to the Legislative
36 Commission that the Legislative Auditor be directed to undertake, or to contract
37 with a qualified accounting firm to undertake, a special audit or investigation of
38 the activities of any state agency, board, bureau, commission or political
39 subdivision in connection with the taxation, operation, safety and environmental
40 regulation of mines and mining in this State.

41 2. The request submitted pursuant to subsection 1 must be accompanied by
42 an explanation of the circumstances that give rise to the request.

43 Sec. 12. A regulation adopted by the:

44 1. Nevada Tax Commission, pursuant to NRS 360.090, concerning any
45 taxation related to the extraction of any mineral in this State, including, without
46 limitation, the taxation of the net proceeds pursuant to this chapter and Section 5
47 of Article 10 of the Nevada Constitution;

48 2. Administrator of the Division of Industrial Relations of the Department
49 of Business and Industry for mine health and safety pursuant to NRS 512.131;

50 3. Commission on Mineral Resources pursuant to 513.063, 513.094 or
51 519A.290; and

52 4. State Environmental Commission pursuant to NRS 519A.160,

1 *is not effective unless it is approved by the Mining Oversight and*
2 *Accountability Commission.*

3 *Sec. 12.5. NRS 362.120 is hereby amended to read as follows:*

4 362.120 1. The Department shall, from the statement filed pursuant to NRS
5 362.110 and from all obtainable data, evidence and reports, compute in dollars and
6 cents the gross yield and net proceeds of the calendar year immediately preceding
7 the year in which the statement is filed.

8 2. The gross yield must include the value of any mineral extracted which was:

9 (a) Sold;

10 (b) Exchanged for any thing or service;

11 (c) Removed from the State in a form ready for use or sale; or

12 (d) Used in a manufacturing process or in providing a service,

13 *during that period.*

14 3. The net proceeds are ascertained and determined by subtracting from the
15 gross yield the following deductions for costs incurred during that period, and none
16 other:

17 (a) The actual cost of extracting the mineral ~~and~~, *which is limited to direct costs*
18 *for activities performed in the State of Nevada.*

19 (b) The actual cost of transporting the mineral to the place or places of
20 reduction, refining and sale.

21 (c) The actual cost of reduction, refining and sale.

22 (d) The actual cost of ~~marketing and~~ delivering the mineral. ~~and the~~
23 ~~conversion of the mineral into money.~~

24 (e) The actual cost of maintenance and repairs of:

25 (1) All machinery, equipment, apparatus and facilities used in the mine.

26 (2) All milling, refining, smelting and reduction works, plants and
27 facilities.

28 (3) All facilities and equipment for transportation except those that are
29 under the jurisdiction of the Public Utilities Commission of Nevada or the Nevada
30 Transportation Authority.

31 ~~(f) The actual cost of fire insurance on the machinery, equipment, apparatus,~~
32 ~~works, plants and facilities mentioned in paragraph (e).~~

33 ~~(g)~~ Depreciation of the original capitalized cost of the machinery, equipment,
34 apparatus, works, plants and facilities mentioned in paragraph (e). The annual
35 depreciation charge consists of amortization of the original cost in a manner
36 prescribed by regulation of the Nevada Tax Commission ~~and~~ *and approved by the*
37 *Mining Oversight and Accountability Commission created by section 5 of this act.*
38 The probable life of the property represented by the original cost must be
39 considered in computing the depreciation charge.

40 ~~(h) All money expended for premiums for industrial insurance, and the actual~~
41 ~~cost of hospital and medical attention and accident benefits and group insurance for~~
42 ~~all employees.~~

43 ~~(i)~~ *(g)* All money paid as contributions or payments under the unemployment
44 compensation law of the State of Nevada, as contained in chapter 612 of NRS, all
45 money paid as contributions under the Social Security Act of the Federal
46 Government, and all money paid to either the State of Nevada or the Federal
47 Government under any amendment to either or both of the statutes mentioned in
48 this paragraph.

49 ~~(j)~~ *(h)* *The costs of employee travel which occurs within the State of*
50 *Nevada and which is directly related to mining operations within the State of*
51 *Nevada.*

52 *(i) The costs of Nevada-based corporate services relating to paragraphs (e) to*
53 *(h), inclusive.*

(j) The actual cost of developmental work in or about the mine or upon a group of mines when operated as a unit ~~+~~
~~(k) +~~, which is limited to work that is necessary to the operation of the mine or group of mines.

(k) The costs of reclamation work in the years the reclamation work occurred, including, without limitation, costs associated with the remediation of a site.

(l) All money paid as royalties by a lessee or sublessee of a mine or well, or by both, in determining the net proceeds of the lessee or sublessee, or both.

4. Royalties deducted by a lessee or sublessee constitute part of the net proceeds of the minerals extracted, upon which a tax must be levied against the person to whom the royalty has been paid.

5. Every person acquiring property in the State of Nevada to engage in the extraction of minerals and who incurs any of the expenses mentioned in subsection 3 shall report those expenses and the recipient of any royalty to the Department on forms provided by the Department. The Department shall report annually to the Mining Oversight and Accountability Commission the expenses and deductions of each mining operation in the State of Nevada.

6. The several deductions mentioned in subsection 3 do not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in:

- (a) The working of the mine;
- (b) The operating of the mill, smelter or reduction works;
- (c) The operating of the facilities or equipment for transportation;
- (d) Superintending the management of any of those operations; ~~+~~
- (e) The State of Nevada, in office, clerical or engineering work necessary or proper in connection with any of those operations ~~+~~; or

(f) Nevada-based corporate services.

7. The following expenses are specifically excluded from any deductions from the gross yield:

- (a) The costs of employee housing.
- (b) Except as otherwise provided in paragraph (h) of subsection 3, the costs of employee travel.
- (c) The costs of severing the employment of any employees.
- (d) Any dues paid to a third-party organization or trade association to promote or advertise a product.
- (e) Expenses relating to governmental relations or to compensate a natural person or entity to influence legislative decisions.
- (f) The costs of mineral exploration.
- (g) Any federal, state or local taxes.

8. As used in this section, "Nevada-based corporate services" means corporate services which are performed in the State of Nevada from an office located in this State and which directly support mining operations in this State, including, without limitation, accounting functions relating to mining operations at a mine site in this State such as payroll, accounts payable, production reporting, cost reporting, state and local tax reporting and recordkeeping concerning property.

Sec. 13. NRS 512.140 is hereby amended to read as follows:

512.140 The Administrator shall submit annually to the Governor, and to the Mining Oversight and Accountability Commission created by section 5 of this act, as soon as practicable after the beginning of each calendar year, a full report of the administration of the Administrator's functions under this chapter during the preceding calendar year. The report must include, either in summary or detailed

1 form, the information obtained by the Administrator under this chapter together
2 with such findings and comments thereon and such recommendations as the
3 Administrator may deem proper.

4 **Sec. 14.** NRS 513.063 is hereby amended to read as follows:

5 513.063 The Commission shall:

6 1. Keep itself informed of and interested in the entire field of legislation and
7 administration charged to the Division.

8 2. Report to the Governor , *the Mining Oversight and Accountability*
9 *Commission created by section 5 of this act* ~~§~~ and the Legislature on all matters
10 which it may deem pertinent to the Division, and concerning any specific matters
11 previously requested by the Governor ~~§~~ *or the Mining Oversight and*
12 *Accountability Commission.*

13 3. Advise and make recommendations to the Governor , *the Mining*
14 *Oversight and Accountability Commission* and the Legislature concerning the
15 policy of this State relating to minerals.

16 4. Formulate the administrative policies of the Division.

17 5. Adopt regulations necessary for carrying out the duties of the Commission
18 and the Division.

19 **Sec. 15.** NRS 513.093 is hereby amended to read as follows:

20 513.093 The Administrator:

21 1. Shall coordinate the activities of the Division.

22 2. Shall report to the Commission upon all matters pertaining to the
23 administration of the Division.

24 3. *Shall attend each regular meeting of the Mining Oversight and*
25 *Accountability Commission created by section 5 of this act and each special*
26 *meeting if requested by the Chair of that Commission and:*

27 (a) *Report to the Mining Oversight and Accountability Commission on the*
28 *activities of the Division undertaken since the Division's previous report,*
29 *including, without limitation, an accounting of any fees or fines imposed or*
30 *collected;*

31 (b) *The current condition of mining and of exploration for and production of*
32 *oil, gas and geothermal energy in the State; and*

33 (c) *Provide any technical information required by the Mining Oversight and*
34 *Accountability Commission during the course of the meeting.*

35 4. Shall submit a biennial report to the Governor and the Legislature through
36 the Commission concerning the work of the Division, with recommendations that
37 the Administrator may deem necessary. The report must set forth the facts relating
38 to the condition of mining and of exploration for and production of oil and gas in
39 the State.

40 **Sec. 16.** Chapter 514 of NRS is hereby amended by adding thereto a new
41 section to read as follows:

42 *The Director of the Bureau of Mines and Geology shall attend each regular*
43 *meeting of the Mining Oversight and Accountability Commission created by*
44 *section 5 of this act and each special meeting if requested by the Chair of the*
45 *Commission and:*

46 1. *Report to the Commission on the activities of the Bureau of Mines and*
47 *Geology undertaken by the Bureau since its previous report, including, without*
48 *limitation, the current condition of mining and of exploration for and production*
49 *of oil and gas in the State; and*

50 2. *Provide any technical information required by the Commission during*
51 *the course of the meeting.*

52 **Sec. 17.** The Department of Taxation shall submit to the Mining Oversight
53 and Accountability Commission created by section 5 of this act at the first regular

meeting of the Commission following the effective date of this act a comprehensive audit program that sets forth the Department's plan for completing an audit of every mining operator or other person who is required to file a statement concerning the extraction of minerals in this State pursuant to NRS 362.100 to 362.240, inclusive.

Sec. 17.3. The amendatory provisions of section 12.5 of this act:

1. Do not apply to or affect any determination of gross yield or net proceeds required pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2011.

2. Apply for the purposes of estimating and determining gross yield and net proceeds pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2012 and each calendar year thereafter.

Sec. 17.7. 1. The Nevada Tax Commission, on or before January 1, 2012, and subject to the requirements of section 12 of this act, shall adopt regulations to carry out the provisions of NRS 362.120, as amended by section 12.5 of this act.

2. In adopting regulations pursuant to subsection 1, the Nevada Tax Commission shall amend or repeal any of its existing regulations that conflict or are inconsistent with the provisions of NRS 362.120, as amended by section 12.5 of this act.

Sec. 18. Notwithstanding the provisions of section 5 of this act, as soon as practicable after the effective date of this act:

1. The Governor, Majority Leader of the Senate and Speaker of the Assembly shall each appoint ~~four~~ to the Mining Oversight and Accountability Commission created by section 5 of this act:

(a) One member whose term expires on June 30, 2012; and

(b) One member whose term expires on June 30, 2013.

2. The Minority Leader of the Senate shall appoint to the Mining Oversight and Accountability Commission created by section 5 of this act one member whose term expires on June 30, 2013.

Sec. 19. 1. This section and sections 1 to 12, inclusive, and 13 to 18, inclusive, of this act ~~becomes~~ become effective upon passage and approval.

2. Section 12.5 of this act becomes effective on January 1, 2012.