

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE**

**Seventy-sixth Session
May 18, 2011**

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

COMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

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

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CHAIR LESLIE:

I will open the hearing on Senate Bill (S.B.) 491 and the Proposed Amendment 6801 we received on May 11.

[SENATE BILL 491](#): Makes various changes regarding public revenue and taxation. (BDR 31-1150)

MARK W. CRAWFORD (CEO, Northern Nevada Medical Center):
I have prepared testimony ([Exhibit C](#)).

CHAIR LESLIE:

Did you testify your hospitals pay \$108 million in State taxes?

MR. CRAWFORD:

That is correct.

CHAIR LESLIE:

What kind of taxes?

MR. CRAWFORD:

We pay property tax, Modified Business Tax (MBT), sales tax for goods and the taxes paid on behalf of our employees.

CHAIR LESLIE:

Have you looked at the bill and how it would apply to your hospital?

DAN MUSGROVE (The Valley Health System):

We have tried to do an analysis on the sales tax on services and the margin tax. It is close to a breakeven as long as the MBT is eliminated, and there might be a net benefit to us. The MBT has been regressive because we have a lot of employees. We have 5,300 employees working for The Valley Health System statewide. We are cautiously optimistic about what is called the margin tax. The Assembly transaction tax would cost us hundreds of thousands, not millions. We would pay around \$150,000 more in taxes to buy down the sales tax.

CHAIR LESLIE:

Which of the three options would you be using?

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MR. MUSGROVE:
We would use the labor cost option.

SENATOR HARDY:
Do you support lifting the sunsets?

MR. CRAWFORD:
We do look for the sunset of the minimum tax.

MR. MUSGROVE:
We understand the need for the bridge, but we also support lifting the sunsets until the new taxes eliminate the current ones.

SENATOR HARDY:
The sunsets are more than the MBT increase. Do you support lifting the sunset on all the taxes?

MR. MUSGROVE:
We understand the program. It is important to fund the areas cut in the Governor's budget in terms of mental health and Medicaid to hospitals and providers. It is important for us that those cuts not take place, and as part of the package, lifting sunsets makes sense until the new tax program is in place.

SENATOR HARDY:
You support lifting the sunsets and using the MBT phaseout according to the schedule proposed in S.B. 491.

MR. CRAWFORD:
It is hard for the hospital system to support any taxes, but it is important to continue and not to see any more reductions. If it is a yes or no question, then yes, we support it.

CHAIR LESLIE:
You testified you provide \$170 million in charity care. The 5 percent cut is a \$13 million hit to the State budget. By putting it back, there is a multiplier of about \$80 million in additional funding. Is that correct?

MR. MUSGROVE:

We agree. We are a large employer and have a partnership with the State to take care of the most vulnerable populations. With the cuts, it is becoming harder for us to find physicians, as well as taking on those responsibilities.

CHAIR LESLIE:

Where are your hospitals?

MR. MUSGROVE:

We have five in southern Nevada and the Northern Nevada Medical Center in Sparks.

SENATOR MCGINNESS:

When you testified to the taxes you pay for your employees, did you mean the taxes they pay individually?

MR. CRAWFORD:

That is inclusive of the employer-paid component of their taxes.

SENATOR MCGINNESS:

Would the tax on services cover medical services from physicians?

MR. MUSGROVE:

We would not pay certain portions of the sales tax on services that are directly health-care related. I would think a physician who is providing would be exempt. We are still trying to figure out the proposed amendment.

CHAIR LESLIE:

My understanding is health care is exempt because it is regressive.

JAMES T. RICHARDSON, J.D. Ph.D. (Nevada Faculty Alliance):

We are in support of maintaining the taxes that are going to sunset and the margin tax. We are having a brain drain in the Nevada System of Higher Education. Nevada public universities have less than half the number of faculty than Utah, a state with the same population. We are severely understaffed compared to other states, which means fewer experts, upper division classes and classes in general, and now, these huge cuts are proposed. If the Governor's budget is approved, over 1,500 people will be terminated, and by the end of the second year of the biennium, there will be 38 colleges,

schools or departments closed, 23 academic degree programs eliminated, 46 academic degree programs suspended, with 2,373 sections no longer available to students.

We want to help with economic diversification in the State, but we need more funding—there is no money in the Knowledge Fund. In Utah, a similar fund gets an average of \$15 million a year from the general fund plus \$33 million from federal stimulus funding to Utah's version of a knowledge fund, which funds research in areas where the state is trying to diversify its economy. Assembly Bill 449, which creates the Knowledge Fund, does not provide any revenue for the Fund. We support a broad-based business tax and a tax on services.

ASSEMBLY BILL 449: Revises provisions relating to economic development.
(BDR 18-726)

SENATOR SCHNEIDER:

You are saying we are not really building research institutions, we are dismantling universities.

DR. RICHARDSON:

We have two very good universities which are categorized in the Country as top research universities. We had around \$300 million brought in by grants. I think we are close to dismantling a couple of universities that have reached a point of near-greatness. Desert Research Institute has lost 30 people, and they have taken millions of dollars of grant money with them to leave the State.

SENATOR SCHNEIDER:

I know Salt Lake City, Utah, is outpacing us in the area of economic development. The University of Utah is investing money in research that brings in companies that will relocate in the area for their university's academic expertise. You are testifying that Nevada is not making that investment for economic development.

DR. RICHARDSON:

Yes, it is worse than that because at a meeting last year, Utah recruited one of our top professors from the University of Nevada, Reno. He took millions of dollars in grant money and five employees with him.

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SENATOR SCHNEIDER:

Major research universities are moving into the large football conferences; for example, the University of Nebraska, Lincoln, was offered \$350 million in research grants to join the Big 10 Conference.

VICTOR JOECKS (Nevada Policy Research Institute):

I have prepared testimony ([Exhibit D](#)) and the Tax Foundation Fiscal Fact report ([Exhibit E](#)).

CHAIR LESLIE:

Do you know if the study considered our MBT phaseout and putting the \$1 million cap on small business? Was the study specific to our proposal?

MR. JOECKS:

It is specific to the Nevada proposal, but it does not do a comparison to the MBT. It just considers the impacts of a margin tax and talks about gross receipts tax.

CHAIR LESLIE:

I understand the study looked at our proposal, but did the report's analysts take into account the repeal of the MBT?

MR. JOECKS:

No. It was not a comparison of the MBT versus the margin tax. It was an analysis on the impact of the margin tax.

ROBERT STANLEY HADFIELD:

I would encourage you to look at these proposals because you have the opportunity to make a tax system based on tax policy. I am concerned about the infrastructure of workers and local governments in the State that is affected by the revenue shortfalls. Our tax system has not worked for over a decade, and it seems we always get saved at the last minute. If we dismantle the State's system and we do not address the revenue system, the system will never be rebuilt. At the local government and State levels, the criticalness of addressing these issues has never been more important. The broad-based and fair approach of this legislation will help the State for decades to come.

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CHAIR LESLIE:

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

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

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

I have prepared testimony regarding my Proposed Amendment 6968 ([Exhibit F](#) and [Exhibit G](#)).

SENATOR SCHNEIDER:

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

SENATOR HORSFORD:

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

SENATOR HARDY:

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

SENATOR HORSFORD:

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

SENATOR HARDY:

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

CHAIR LESLIE:

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

SENATOR HORSFORD:

Our law states that deductions are only allowed to specified areas and that the deductions allowed be based on the actual cost associated with the operation of the mine. There is a special tax provision for the mining industry; we have stated that operators should have limited deductions at the State level for tax paid under the Net Proceeds of Minerals Tax. It has nothing to do with the other taxes they pay or whatever deductions they take against their federal income tax. There is ambiguity from the Nevada Tax Commission. Chair Robert Barengo indicated that there is a lot of gray, saying the Nevada Tax Commission cannot set by regulation what the members think is in or out because law is not as clear as it needs to be. He encouraged me to bring this issue before the Legislature this Session so that the regulations could be clearer on what is in, what is out.

SENATOR HARDY:

I do not see the nexus between the State deduction and the Internal Revenue Service from the Proposed Amendment 6968, [Exhibit G](#).

SENATOR MCGINNESS:

My concern with the original bill was the large oversight. What is the cost of the amendment?

SENATOR HORSFORD:

The State Gaming Control Board and the Nevada Gaming Commission have oversight over this as well as other functions. State agencies have to interact with the Board and the Commission. If it is okay for the gaming industry, why would it not be appropriate for the mining industry? Some issues need a clearinghouse. As a private citizen, I had to petition the Tax Commission. If I was not a Legislator or in a leadership position, I doubt that my petition would have been considered in the manner it was given. Because I went through the process as a private citizen, it was not an easy process. I had to file a formal petition, collect the data from the Department of Taxation and other agencies and compile it in order to make my case before the Tax Commission. The proposed Mining Oversight and Accountability Commission would be one place where the public could get issues addressed. Our Gaming Control Board and the Gaming Commission are put up as national or international standards for regulatory oversight of that industry. No one does anything in gaming anywhere in the world without calling the Nevada Gaming Control Board or

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Gaming Commission and asking for advice. Would we not want the same for the mining industry since we are the No. 1 gold producer?

SENATOR MCGINNESS:

Good answer. What about not allowing the cost of mineral exploration. Is it like not allowing research and development?

SENATOR HORSFORD:

Are you saying we should allow the mining industry to deduct those costs? That is a policy decision we can talk about, but it is not permitted, and mining operators have been taking it as a deduction.

SENATOR HARDY:

Is there someone modeling a mining commission?

SENATOR HORSFORD:

I did research it, and I will supply models to the Committee. Models in other states do have one authority, one entity that oversees multiple functions in the manner we are describing.

TIM CROWLEY (President, Nevada Mining Association):

As we testified earlier, we are neutral on this bill and we remain neutral. We neither object to oversight of our industry nor clarification of the law to make the rules clearer to everybody, including the taxpayer. We were asked to come up with proposed changes, and we have some recommendations. We believe the intent of the bill lies within section 12. We question the duplicative nature of giving the oversight authority the ability to approve regulations coming through the Division of Industrial Relations, the Tax Commission or through the State Environmental Commission. Our concern is the timing and expertise because of the difficulty in assembling an oversight commission of seven people with the breadth of knowledge to address things as broad as environmental, safety and taxation issues. Section 7 talks about the plenary oversight, and the word plenary causes us concern because it could usurp the Legislature's oversight authority of the mining industry.

We have language we think might be better: "The Commission will exercise its powers to provide oversight of compliance with Nevada law relating to the taxation, operation, safety and environmental regulations of mines and mining." We think this language is clearer to the intent of the bill. Section 11 talks about

oversight of political subdivisions, and we are not sure that was intended in the bill. Section 11, subsection 1, line 38 in [Exhibit G](#) gives auditing authority to "... political subdivision in connection with the taxation, operation, safety and environmental" We think political subdivision means local governments—we are not sure that is what you want to do.

SENATOR HORSFORD:

In the original bill concerning the Mining Oversight and Accountability Commission, you stated that members would not have the broad breadth of experience over those areas. But it would still maintain agency functions, so whatever expertise exists in taxation, safety and environment are handled at the agency level. From there it would be referred to the Tax Commission. What is the point that the seven members of the Mining Oversight and Accountability Commission would be unable to deal with it—what is the difference between them and the Tax Commission?

MR. CROWLEY:

The way it is handled now, we have commissions that specifically look at taxation, industrial relations and environmental issues, and this system is effective.

CHAIR LESLIE:

The idea is you have more expertise specific to mining on the proposed Mining Oversight and Accountability Commission, whereas the Tax Commission has specific people appointed with expertise in certain areas—mining tax, as an example—as required by law. This proposed commission would deal with more than just regulations on tax. But we would appoint people more specific to mining tax and safety, and the technical expertise would come from the agencies that regulate that specific area

MR. CROWLEY:

This bill does not specify those appointments would be mining specialists.

SENATOR HARDY:

Is there a way to look at deductions with the level of expertise that would get to the mining aspect in the framework of how it is done now—in oversight of the environmental, oversight of labor relations and oversight of the Tax Commission? Do you envision applying how it is done now to the other aspects of the bill on deductions?

MR. CROWLEY:

You could put people who have great expertise in net proceeds deductions on the oversight committee.

SENATOR HARDY:

Do I need a new oversight committee if we like how it is done now? Is there a way I do not need a new commission but have an expert on deductions on the Tax Commission?

MR. CROWLEY:

You could require that level of expertise on the Tax Commission.

SENATOR HORSFORD:

I will provide the documentation I had to submit to the Tax Commission to make this argument in my testimony ([Exhibit H](#) and [Exhibit I](#)). Is the Tax Commission effective if the State Attorney General says the regulation under consideration is not appropriate, and because of an objection by one of the Tax Commissioners, the opinion was taken off the record and the regulation adopted? Is it effective when legal counsel advised the Tax Commission to not adopt some of the regulations because they exceeded the authority of statute, and over the objection of legal counsel, the Tax Commission did it anyway? We have experts from the industry on the Tax Commission. I want that information as part of the record to the Tax Commission under my petition to be part of this legislative record. The people of this State deserve to have their regulatory structure work and not to have staff from the Attorney General's Office or legal counsel ignored. This has been going on for years.

MR. CROWLEY:

We have followed the rules; we have paid our taxes as appropriate; the deductions we take have been within the guidelines, regulations and laws. We question whether we are getting deductions that other taxpayers in the State are not getting. The answer is no other taxpayer in the State pays this tax. We do agree this is designed as a specific tax to the operation, not corporate overhead. We support the effort to be clear.

I have a couple of specific comments concerning the Proposed Amendment 6968, [Exhibit G](#). In section 12.5, subsection 3, paragraph (d), we support the removal of marketing language because marketing should not be deducted. In section 12.5, subsection 3, paragraph (i), travel should be related

to mining operations; there are examples, such as when a mechanic goes to Caterpillar, in Illinois, to learn the new technology or a manager travels to make a purchase directly related to the extraction process and the operation of the mine. We take those deductions today, and we hope to take them in the future.

SENATOR HORSFORD:

Caterpillar is a Nevada operation and most of their equipment is here. How often is training or travel related to the operation of a mine done outside of the State that would necessitate a variance?

MR. CROWLEY:

We have other examples, such as a supplier of turbines based overseas; we have equipment manufactured in the Detroit automotive areas and overseas. Equipment is one example of travel for purchases and training.

SENATOR HORSFORD:

The language in paragraph (i) on page 6 of [Exhibit G](#) reads, "The costs of employee travel which occurs within the State of Nevada and which is directly related to mining operations" If you buy equipment outside the State, is it brought into Nevada for the employees to train or sent to facilities outside of the State?

MR. CROWLEY:

The equipment we buy, which is large in size, is very costly, and we need to see what we are getting before we complete the transaction. Some of the training is done in Henderson, but generally the home offices have greater training facilities for learning, operation and maintenance of the equipment.

SENATOR HARDY:

Do we pay the sales tax in Illinois or do we get the sales tax through Henderson?

MR. CROWLEY:

The State gets credit for the sales tax regardless of where it is purchased. If it is purchased outside of the State, it is called a use tax. We agree with the intent of cost for employee travel directly related to mining operations in Nevada.

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CHAIR LESLIE:

We understand the point you are making. You have testified many times that you pay all taxes under Nevada law, but I did not understand that you are able to deduct part of the sales tax.

MR. CROWLEY:

This regulation would eliminate the deduction of federal, state and local taxes because we deduct the cost of the goods that we purchase, including sales taxes.

CHAIR LESLIE:

Are there any other taxes besides sales tax you pay and then deduct?

MR. CROWLEY:

There are social security taxes and federal employment taxes.

CHAIR LESLIE:

Under this amendment, you would no longer be able to deduct those taxes, is that your understanding?

SENATOR HORSFORD:

You supported the travel deduction in the April letter you submitted ([Exhibit J](#)). Why are you changing your position?

MR. CROWLEY:

Our letter, [Exhibit J](#), does not say these deductions are inappropriate. Our letter highlighted places where we did not think the rules in statute or regulations were clear. We recommend they be discussed and clarified.

SENATOR HORSFORD:

I will read the letter, [Exhibit J](#).

MR. CROWLEY:

Mines exist where there are no communities; for example, Round Mountain Gold Corporation built the town of Hadley as a mining community.

CHAIR LESLIE:

Are you suggesting company towns should be an exception for deductions?

MR. CROWLEY:

I think that is appropriate. The concern is about exploration because only the footprint of the mine is deductible. Some call it development or exploration; there is a distinction between exploring in green fields looking for new ore bodies and developing a mine site. We are deducting exploration on our mine site, which some call development, and that needs to be clarified in the amendment.

CHAIR LESLIE:

We would appreciate any specific suggestions for language. If we were to adopt the amendment, with further clarification, do you have any analysis on how much revenue it would generate for the State?

MR. CROWLEY:

I could only speculate on the cost. I would like to do a specific analysis on this amendment and forward it to you by the end of the week.

SENATOR HORSFORD:

Nevada Revised Statute 362.120 specifically itemizes the deductions that are not allowable—federal income tax, property tax, Business Licenses Fee, Net Proceeds of Minerals Tax, any other tax that an operator is required to pay to the federal government, this state or any other state or a political subdivision thereof as codified in the *Nevada Administrative Code* (NAC). You are taking deductions not allowable under NRS, NAC and the Nevada Tax Commission.

MR. CROWLEY:

We will prepare a written response to this amendment.

SENATOR HORSFORD:

This is why we need oversight.

JAN GILBERT (Progressive Leadership Alliance of Nevada):

I see our State suffering and short of money, and the mining industry is taking its money to corporations overseas. We think employee travel and corporate services should be removed from allowable deductions. This is not a services tax but a tax on the Net Proceeds of Minerals. We are still proposing changing the Nevada Constitution because it is a net tax and we feel it should be a gross tax. It should be 5 percent of the gross. The oversight is long overdue and the

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proposed Mining Oversight and Accountability Commission will open it up in the public's eyes. We urge the passage of the amended version of S.B. 493.

CHAIR LESLIE:

I will close the hearing on S.B. 493 and adjourn the Senate Committee on Revenue at 3:25 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Sheila Leslie, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 491	C	Mark W. Crawford	Prepared Testimony
S.B. 491	D	Victor Joecks	Prepared Testimony
S.B. 491	E	Victor Joecks	Tax Foundation Fiscal Fact
S.B.493	F	Senator Steven A. Horsford	Prepared Testimony Mining Deductions
S.B.493	G	Senator Steven A. Horsford	Proposed Amendment 6968
S.B.493	H	Senator Steven A. Horsford	Nevada Tax Commission Testimony 4/18/11
S.B.493	I	Senator Steven A. Horsford	Statement to Nevada Tax Commission
S.B.493	J	Tim Crowley	Nevada Mining Association Letter