

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE**

**Seventy-sixth Session
June 3, 2011**

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 10:21 a.m. on Friday, June 3, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tim Crowley, President, Nevada Mining Association
Christopher G. Nielsen, Interim Executive Director, Department of Taxation
Samuel P. McMullen, Terra-Gen Power, LLC
Ellen Allman, Business Manager, Terra-Gen Power, LLC

CHAIR LESLIE:

I will open the hearing on Senate Bill (S.B.) 493.

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

JOE REEL (Deputy Fiscal Analyst):

The proposed mock-up ([Exhibit C](#)) reflects the amendment adopted by the Committee on May 20, which was presented by Senator Steven A. Horsford. The new addition to Proposed Amendment 7387, in section 12.5, subsection 3, paragraph (h), was removed from eligibility for deductions from the Net Proceeds of Minerals Tax. A technical adjustment in subparagraph (j) strikes the word "begin" so it now reads "work that is necessary to the operation of the mine or group of mines." Section 17.3 clarifies changes to deductions that would not apply to the Net Proceeds of Minerals calculations related to calendar year 2011 but would become effective for calendar year 2012. Section 12.5 would become effective January 1, 2012, so it would impact the calculation of the Net Proceeds of Minerals Tax with changes to deductions for calendar year 2012.

TIM CROWLEY (President, Nevada Mining Association):

We would like to offer one technical correction to the bill which does not change the projections on which the bill is based. Concerning section 12.5 of [Exhibit C](#), subsection 3, paragraph (j), line 30, we understand that development work on the mine site is a deductible expense, and we would like it to remain. The word "begin" in the amendment creates ambiguity; we would like to clarify the paragraph and pull the word out.

SENATOR HORSFORD:

Is it possible for your Association to review the estimated amounts per these categories? The information I have been provided is more than ten days old and from my understanding, the information is outdated. Also, please provide information on the impact of paragraph (h) with the other adjustments.

MR. CROWLEY:

We will get you better numbers as soon as we can.

CHRISTOPHER G. NIELSEN (Interim Executive Director, Department of Taxation):

The Nevada Tax Commission plans to move forward with the regulations, reviewing and adopting them.

CHAIR LESLIE:

I am sure the Tax Commission would review them and make sure the regulations conform.

MR. NIELSEN:

I understand a regulation adopted by the Tax Commission would not be effective until approval by the Mining Oversight and Accountability Commission. The process now is we go to a public workshop, then to a public Tax Commission meeting to be adopted, then to the Legislative Commission for adoption and on approval, a regulation becomes effective. In this bill, do we go to the Legislative Commission first and then the Mining Oversight Commission or is it the Mining Oversight Commission first?

CHAIR LESLIE:

It is addressed in the bill; we are looking for the reference.

MR. NIELSEN:

Section 12 says "regulation adopted by the: Nevada Tax Commission, ... is not effective unless it is approved by the Mining Oversight and Accountability Commission."

CHAIR LESLIE:

I would assume you would start with the Tax Commission, but I suppose that could be done at the same time.

MR. NIELSEN:

This will take more time than the process to which we currently work. It appears it does not matter upon approval by the Tax Commission whether it goes to the Legislative Commission first or the Mining Oversight Commission.

CHAIR LESLIE:

Given the history of the regulations in this area, a second look is worth the extra time.

MR. NIELSEN:

I wanted to make sure of the intent that all three bodies would have to approve a regulation change in a public forum.

CHAIR LESLIE:

Senator Horsford, would you agree with that?

SENATOR HORSFORD:

Yes.

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SENATOR MCGINNESS:

The Legislative Commission is part of the process in approving regulations.

CHAIR LESLIE:

The Legislative Commission will continue its role in the regulation process. It may be wise to include the Mining Oversight Commission first to get the members' input before involving the other commissions.

SAMUEL P. MCMULLEN (Terra-Gen Power, LLC):

We want to make sure geothermal is managed correctly in S.B. 493. Terra-Gen has no problem with the change in deductions concerning the Net Proceeds of Minerals Tax.

SENATOR HORSFORD:

My suggestion would be to proceed with S.B. 493 and seek another vehicle for the geothermal issue.

SENATOR HORSFORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 493 WITH PROPOSED AMENDMENT 7387 WITH THE TECHNICAL
AMENDMENT ON PAGE 6.

SENATOR SCHNEIDER SECONDED THE MOTION.

SENATOR MCGINNESS:

The oversight is too broad. I have concerns about exploration and a promise to geothermal that we will fix it later. I hope it does not go by the wayside.

CHAIR LESLIE:

We do have a motion pending. Senator Horsford, will you withdraw your motion?

SENATOR HORSFORD:

I will withdraw my motion.

MR. MCMULLEN:

Proposed Amendment 7394 has language that resembles the regulation in the Department of Taxation. The geothermal steam issue has no intrinsic value unless it is changed into a value for the purposes of taxation. The steam has to have a defined value, which is electricity, and this amendment delineates the

expenses of turning it into electricity so a value can be determined, and then there are proceeds to which the tax can apply. Those adjustments are to gross yield, which is the way it has always been handled.

CHAIR LESLIE:

We have the amendment for the Committee and the public.

MR. MCMULLEN:

I will have Ellen Allman cover the information on page 5, section 13, of Proposed Amendment 7394 ([Exhibit D](#)) to S.B. 493. The treatment of a geothermal resource was defined and separate from the treatment of the Net Proceeds of Minerals Tax to the extent geothermal energy is different in the way it is valued and steam is turned into value for the purposes of taxation. This does not affect the Net Proceeds of Minerals Tax or any other deductions.

ELLEN ALLMAN (Business Manager, Terra-Gen Power, LLC):

Given Proposed Amendment 7394 on page 5, sections 13 through 21 are definitions brought over from regulations. They are used in the further definition to get to the adjusted gross yield language, such as "processing allowance" and "transaction," which addresses the beneficiation of steam into electricity. The revenue derived from geothermal energy is through the sale of electricity; however, the Net Proceeds of Minerals Tax should apply to the extraction of steam, so this adjusts the gross yield to mirror the actual value of the steam. These definitions relate to the items that occur once the steam is brought out of the ground, as in processing in the power plant and transmission.

CHAIR LESLIE:

Did you testify that the definitions in sections 13 through 21 are exactly as they are in regulation?

MS. ALLMAN:

That is correct.

SENATOR HORSFORD:

Who set the regulations and when?

MS. ALLMAN:

The Department of Taxation set these over the last ten years.

SENATOR HORSFORD:

If these are in regulation today but need to be adjusted, it would require a law change, not just a regulation adjustment. Could you respond to the necessity of putting them into law and why the regulation process is not sufficient?

MS. ALLMAN:

There was concern that through adjustments and attention to the Net Proceeds of Minerals Tax, all of the deductions in the process by which you would get to Net Proceeds were going to be legislative. In removing the regulations to get to the concept of adjusting the gross yield of a geothermal resource, we were concerned it would get lost in the legislation. This amendment is the method by which you would legislate and codify the adjustment to gross yield to a geothermal resource, acknowledging that geothermal is different. These definitions have not changed in ten years. I understand your concern about any changes that would be made, but if there is a desire to get it into writing, we would want an adjustment to gross yield that is particular to geothermal and that what exists could not be legislated away.

MR. McMULLEN:

There was a concern that nothing in the legislation changes anything about how the adjustment on gross yield for a geothermal resource is determined.

SENATOR HORSFORD:

Is the concern about how it would be handled in statute or in the regulation process because of the clarifications we are making? We are trying to understand the necessity for codifying in statute something that is in regulations. Where in statute is the authority for these regulations to be in place?

MR. McMULLEN:

It is in *Nevada Revised Statutes* (NRS) 362, where it talks about gross yield, and these regulations would be the implementation. We have no objections to the existing regulations.

MR. NIELSEN:

In 2007, the whole section of regulations under NRS 362 was codified, and this proposed amendment mirrors those regulations. When the Tax Commission agreed to review the regulations for Net Proceeds, this is part of the review.

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SENATOR HORSFORD:

If this is verbatim of those regulations, what necessitates putting this in statute?

MS. ALLMAN:

There is no legislative acknowledgement that a geothermal resource is different and that there should be an adjustment to gross yield.

SENATOR HORSFORD:

This is not the appropriate vehicle for that policy decision to be determined. I would suggest we work with you and determine where the appropriate policy discussion is for that issue. We are discussing the oversight and accountability for the deductions we are dealing with in S.B. 493, and your issue goes beyond that. It may be an appropriate discussion in the Senate Committee on Commerce, Labor and Energy.

SENATOR SCHNEIDER:

I have a bill coming over from the Assembly that this may fit into.

CHAIR LESLIE:

There is still time for a full hearing. We will look and see if that vehicle will work and if not, we will find another way.

MS. ALLMAN:

Thank you for the acknowledgment that geothermal needs to be treated differently.

CHAIR LESLIE:

I think it does.

I will accept the previous motion from Senator Horsford and the second from Senator Schneider.

THE MOTION CARRIED. (SENATORS HALSETH AND MCGINNESS VOTED NO.)

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CHAIR LESLIE:

The Senate Committee on Revenue is adjourned at 10:56 a.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. 493	C	Joe Reel	Proposed Amendment 7387
S.B. 493	D	Ellen Allman	Proposed Amendment 7394