

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE**

**Seventy-sixth Session
June 5, 2011**

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 5:59 p.m. on Sunday, June 5, 2011, in Room 2144 of the Legislative Building, Carson City, 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
Brenda Erdoes, Legislative Counsel
Gayle Rankin, Committee Secretary

OTHERS PRESENT:

Debra W. Struhsacker, Nevada Mineral Resources Alliance
Laura Granier, Nevada Mineral Resources Alliance
Tim Crowley, Nevada Mining Association
Jan Gilbert, Progressive Leadership Alliance of Nevada

CHAIR LESLIE:

The hearing on Senate Bill (S.B.) 493 is now open. All members have been provided with a copy of Proposed Amendment 7483 ([Exhibit C](#)).

SENATE BILL 493 (2nd Reprint): Creates the Mining Oversight and Accountability Commission and revises the provisions governing the calculation of the net proceeds of mines. (BDR 32-1152)

RUSSELL GUINDON (Principal Deputy Fiscal Analyst):

Section 5 of the proposed amendment makes changes to the appointment process. There were concerns stressed by various parties with regard to appointments being made by the Senate Majority Leader and the Speaker of the Assembly; and the oscillating appointments made by the Senate Minority Leader and the Assembly Minority Leader. Under this proposed amendment, those four individuals can provide a list of recommendations to the Governor who will make the appointments from those lists. This allows the Governor to confer with those Legislators.

The content of section 7 has been discussed in prior hearings on this bill. This proposal eliminates "political subdivision" from the oversight responsibilities of the Mining Oversight and Accountability Commission.

Section 12 of the Proposed Amendment 7483 removes the authority of the Commission to approve permanent regulations adopted by the entities named in subsections 1 through 4 of that section. The proposal is to require the Commission to review such permanent regulations and report its findings and recommendations to the Legislative Counsel for submission to the Legislative Commission which will have the authority to approve permanent regulations.

Proposed Amendment 7483 returns language that had been deleted from the original bill. This language provides that "all money expended for premiums for industrial insurance and the actual cost of hospital and medical attention and accident benefits and group insurance for all employees" will be allowable deductions from "gross yield" when computing "net proceeds." All other amendments to allowable deductions made by this Committee remain intact.

Section 16.3 of Proposed Amendment 7483 repeals *Nevada Revised Statute* (NRS) 517.187, the mining claims fee, adopted by the 26th Special Session. Section 16.7 establishes a mechanism for refund or credit for any entity that paid mining claim fees under NRS 517.187. These provisions allow any entity that paid the mining fee pursuant to NRS 517.187 to receive a credit against the

Modified Business Tax (MBT) or a refund of the fee. The intent is to design a mechanism to refund to entities that are also businesses and that pay the MBT.

Section 18 aligns the appointment changes proposed in section 1.

CHAIR LESLIE:

I would like to have Brenda Erdoes speak to us about the pending lawsuit that may require us to repeal the mining claims fee.

SENATOR HARDY:

I appreciate the amendment allowing premiums for industrial insurance and the cost of medical insurance to be deducted when computing net proceeds. Was there similar discussion about the cost of mineral exploration and sales tax? For example, I have seen tires on mining equipment that cost \$24,000 each. It seems to me that deducting the sales tax on them would be a legitimate deduction.

CHAIR LESLIE:

We have had discussion on that item in this Committee in the past. The Committee realized the amount of deductions the mining companies were taking was too much. In the final analysis, we decided to leave sales taxes in the list of deductions not allowed. We heard many times from the mining companies they were proudly paying all of their taxes, but they failed to mention they were using the taxes paid as a deduction from their gross yield.

SENATOR HARDY:

Do we have an estimation of the total mining claim fees we have collected under NRS 517.187 that we now have to refund?

MR. GUINDON:

Based on information available to staff during the 26th Special Session in February 2010, we estimated \$25.7 million had been collected. Further analysis showed that could not be possible. The forecasters revised the estimate to \$18.75 million for the Economic Forum's December and May meetings. Fiscal year to date, we have actually collected approximately \$4.2 million. The mining claims fee legislation, as originally established, allowed a payer to pay 100 percent at time of filing; or pay 50 percent at time of filing and 50 percent on or before the following June 1; or pay nothing at time of filing and pay

100 percent on or before the following June 1. That is why the amount actually collected is so low. The refund liability would be the \$4.2 million. The impact on the State Budget is the \$18.75 million that must be removed from estimated income projections.

SENATOR HORSFORD:

Is it possible to talk to Mr. Crowley or Mr. Wadhams about this number that keeps changing? Our staff tells us \$4.2 million. The mining industry representatives quote higher figures. What is the true number, and who can confirm it?

I have had discussions with the Governor about the appointment process. The process in this bill should be consistent with how the Governor would like to treat appointments in the future. The language in section 12 of Proposed Amendment 7483 further clarifies the intent of the sponsors of the bill as it pertains to having additional oversight but not being redundant.

When we started the discussion about deductions related to the Net Proceeds of Minerals Tax (NPOMT), we met with representatives from the mining industry. We looked at all the deductions and tried to include those that were most appropriate. These are deductions used to determine the net proceeds and a cap on the net proceeds of 5 percent. This is not like other businesses. It is not treated in the same way as other businesses. It is a special unique deduction used to determine net proceeds, which is capped at 5 percent. I would argue that is as all-conclusive as appropriate. The health care deduction was added to allowed deductions. After further review, clearly that is something I think we all believed we should support—efforts to provide health insurance to employees. I felt it was appropriate to allow that deduction to be reconsidered.

The sales tax deduction is in dispute. I do not think it should have ever been allowed based on my understanding of statute. However, the Nevada Tax Commission has allowed it. They asked us to clarify what should be included and what should not be included as deductions. If we clearly say it is not included in allowable deductions, there would be no further ambiguity on the subject.

It is clear in the amendment that the cost of mineral exploration, if it is on-site, is an appropriate deduction. If it is off-site, it should not necessarily be taken as

Senate Committee on Revenue
June 5, 2011
Page 5

a deduction against the net, with the 5 percent cap on the net. If we had a different structure, a fairer and more equitable tax system, something that was not unique to this industry, perhaps I could consider it as a deduction.

SENATOR HARDY:

Would the cost of mineral exploration be included in the list of allowable deductions?

SENATOR HORSFORD:

In section 12.5, subsection 3, new paragraph (k) refers to the actual cost of development work and new paragraph (l) refers to the cost of reclamation work. These would be allowable deductions.

DEBRA W. STRUHSACKER (Nevada Mineral Resources Alliance):

Repealing the mining claims fee is very important to members of the exploration community who have paid this fee and do not have revenue from mining with which to pay it.

SENATOR LESLIE:

Do you know how much your members have paid already?

MS. STRUHSACKER

I do not have an up-to-date accounting of that. I know, anecdotally, there are many claimants who waited as long as possible to pay the fee and paid before the deadline to be in compliance with the law.

LAURA GRANIER (Nevada Mineral Resource Alliance):

I am the attorney who represented the plaintiffs in the lawsuit regarding the mining claims fee. I waited as long as possible before filing that case in hopes we could work collaboratively with the State. The State Constitution allows for taxation of mining and minerals in only one way: on net proceeds. Our clients continue to have a strong desire to work collaboratively with the Legislature to draft good policy that is mutually beneficial to the industry and the public. We believe this is possible.

CHAIR LESLIE:

Do you support Proposed Amendment 7483?

MS. STRUHSACKER:
Yes.

MS. GRANIER:
Yes.

BRENDA ERDOES (Legislative Counsel):

The State was sued in District Court in Elko and in District Court in Carson City. The case in Carson City was filed approximately one month ago. In that case, the plaintiffs asked for a temporary restraining order to enjoin the State from collecting the fee. That order request was granted on May 31. For that reason, the fee cannot be collected at this time. If you ask us to appeal that order, it could be a year or more until it is resolved. The result is that the estimated revenue from the collection of the fee must be removed from the budget.

We believe we have a good case. We advised that if we were to lose the case, there would be a judgment that would likely require the State to repay any fees collected. If you repeal the fee now, as provided in Proposed Amendment 7483, you would enact an orderly method to repay those collected fees. This will assist in fiscal planning and budgeting. By the end of the biennium, you will know how much money you have paid out. You will have a controlled method to handle the refunds. Almost certainly, if you were to repeal it, you would be mooting the case so we would not be able to go back and appeal to the Nevada Supreme Court and finish this litigation. It would be left at this stage.

SENATOR HORSFORD:

The problem with the reported offer by the mining industry to do a "true-up" as a one-time payment to the State is the potential impact to local governments since they would not receive their allocated share. Because of the split in the net proceeds of mineral revenue structure, that could be problematic for us as well.

MS. ERDOES:

That is my interpretation. Anything you do to change the deductions, or anything you do to affect net proceeds, also affects the Constitutional provision that says all the proceeds you get from the NPOMT has to be split. First you take the local government tax rates and apply it towards those proceeds. That money is appropriated to the local governments. The State gets the rest.

Anything you do along the lines of a settlement here without taking into account the local governments subjects us to a problem.

SENATOR HORSFORD:

It is important to make all this information public and to have a transparent discussion about it. We did not have a transparent process when we adopted the mining claim fee. The fee was suggested. We did not hold a hearing on it. It got challenged in court. We lost. Now, we are in a predicament. I do not want another such situation. Anything can be proposed. If it is not legal or appropriate based on our revenue structure, we should not do it.

CHAIR LESLIE:

Mr. Crowley, can you tell us how much your members have paid in mining claims fees and how much would be potentially refunded to them?

TIM CROWLEY (Nevada Mining Association):

It has been asserted that \$4 million has been collected in mining claim fees. In the past 20 minutes, I have called our two biggest mine operators and confirmed that they have cancelled checks for paid mining claim fees. Newmont has paid \$3.8 million. Barrick has paid \$4.4 million. Those payments were made to the county recorders.

We have reviewed Proposed Amendment 7483, and we support it. We appreciate the fact you recognize health care as a cost of labor and a legitimate deduction. It should be maintained. We understand this deduction creates a hole in the budget, and we support the mechanism for filling that hole. We made a commitment on mine claim fees in 2010, during the Special Session, and we intend to stand by that.

CHAIR LESLIE:

Do you take the deduction for health insurance under the MBT and the NPOMT?

MR. CROWLEY:

Yes.

CHAIR LESLIE:

Mr. Guindon, how much did you say the State has collected in mining claim fees? Were there companies other than Barrick and Newmont that have paid fees?

MR. GUINDON:

According to the Office of the State Controller's records, for the fiscal year to date in 2011, receipts show \$4,161,554. 50. The bulk of this was received in October and November, 2010. There have been small amounts since then. Nothing has been posted to the account since April 27, 2011. If checks have been received by county recorders, we would need proof of payments by cancelled checks for us to track those payments. In preparation for this meeting, your staff requested information from county recorders on who has paid and how much they have paid. We have that information. Many of the mining companies filed but paid nothing. Some paid 50 percent upon filing. If payments have been made to county recorders since April, the Office of the State Controller's records do not yet reflect those payments because, under the law, county recorders can submit those monies quarterly.

CHAIR LESLIE:

Mr. Crowley, to be completely transparent, the proposal on the table is that the mining companies not receive the refunds. Is that correct?

MR. CROWLEY:

That is correct. We have six mining companies that have agreed to waive refund of the mining claim fees paid or have that money credited to their MBT. This reflects \$3.8 million for Newmont and \$4.4 million for Barrick. The total is \$8.6 million which exceeds the amount of budget impact for the removal of the health care provision. I propose it be prorated to fit the amount of the budget hole.

CHAIR LESLIE:

Please clarify.

MR. CROWLEY:

The payments from six companies in mine claim fees comes to \$8.6 million. This exceeds the hole created by the amendment on the table.

Senate Committee on Revenue
June 5, 2011
Page 9

CHAIR LESLIE:

So, the contribution to the General Fund is \$8.6 million. Is that correct?

MR. CROWLEY:

No. It would be \$6.435 million, the amount calculated in the medical insurance deduction.

SENATOR HORSFORD:

Proposed Amendment 7483 allows for the deduction of insurance, [Exhibit C](#), page 6, lines 24-26. Mr. Crowley, if we denied the industry's ability to take that deduction, you estimate that to be a \$6.435 million impact to those companies. Is that correct? In place of that, there would be the waiver of the mining claim fee payments that have been made by the large companies.

MR. CROWLEY:

I am not authorized to speak on behalf of those companies to that total amount. They have committed to covering the hole that is created by this amendment. That would come to \$6.435 million.

CHAIR LESLIE:

That is what I thought you said. You are saying only \$6.435 million, not \$8.6 million. Is that correct?

MR. CROWLEY:

That is correct.

SENATOR HORSFORD:

Mining gets a deduction on the MBT for insurance. Now mining wants to take the same deduction for the NPOMT. Is that correct? What is the net effect of doing that?

MR. CROWLEY:

The NPOMT and the MBT are different taxes. The NPOMT is a calculation of pinpointing the value of our minerals. Part of getting to that value is deducting the cost of labor, which includes health care.

Senate Committee on Revenue
June 5, 2011
Page 10

SENATOR HORSFORD:

No other industry gets to deduct its health care twice against two revenue sources.

MR. CROWLEY:

There are no deductions taken, once you have pinpointed the fair market value of our minerals. We pay 5 percent of 100 percent of the fair market value. From that 100 percent, there are no deductions taken. There is a calculation of arriving at fair market value. That includes deducting the operating costs, including the cost of labor, from the products we sell. Once you have subtracted those, you determine the value of the extracted mineral and apply 5 percent to that. I do not know the amount of the deduction on the MBT. That was an incentive the Legislature placed in the MBT in 2003. We supported the implementation of that tax. We pay that tax, and we appreciate the incentive for adding health care to that tax.

CHAIR LESLIE:

Can you place a value on the MBT you save by being able to deduct health care?

MR. CROWLEY:

I cannot do that at this moment, but I can find out very quickly.

SENATOR HORSFORD:

The policy for all these deductions is what is reasonable and allowable based on the unique tax structure of the NPOMT. Because the mining industry, like all other industries, can deduct the cost against the MBT for health care insurance, why should the industry also be able to deduct those costs against NPOMT?

MR. CROWLEY:

I do not know another way to explain it. It is an important point. The industry does not take deductions off the final tax bill. Once the fair market value of our minerals is determined, we have no deductions off that rate, as opposed to a homeowner who has a fair market value of a home and 65 percent of that is cut from that value before the property tax is computed. We have no deductions from the final determination of fair market value. The cost of labor is an essential factor for pinpointing the value of the extracted mineral.

SENATOR HORSFORD:

Yes, and you get that in the MBT. I do not agree with your comparison to homeowner property tax computations. I agree that labor costs should be deducted when computing your MBT. Why should that also be allowed when computing the net proceeds of NPOMT which your industry thinks is a property tax?

MR. CROWLEY:

I can only say that we are not deducting health care costs from the fair market value.

CHAIR LESLIE:

This is the same conflict we have had during this Session. Mining wants to be treated like every other business so it takes all the tax deductions every other business takes. But, when we talk about mining's special tax provisions, we find that mining takes the same deduction twice.

SENATOR MCGINNESS:

Are you doing anything illegal?

MR. CROWLEY:

No. We have paid all our taxes to the full extent of the law.

CHAIR LESLIE:

And to the extent the Nevada Tax Commission, Department of Taxation, allows you to do it.

SENATOR HARDY:

When the mining company writes a check for \$4.4 million or \$3.8 million to the county recorder, who cashes the check? Who sends it to the State? Does the county take their share first?

MR. CROWLEY:

I do not know the mechanics of how that check moves from the county to the State. There is no county portion in that check for fees the Legislature enacted in 2010.

SENATOR HARDY:

Does the State receive all of the monies received by the county and then return the county's portion to the county?

MR. CROWLEY:

You are mixing two issues. Legal Counsel addressed the issue of a credit for future tax payments. There was concern about crediting our payments to the NPOMT because of the share components of that tax. There is no county share component of the mining claim fee.

SENATOR HARDY:

Realistically, if the check for the mining claim fee were passed on to the State, we should have a \$4.4 million check and a \$3.8 million check somewhere in the mail. Is that correct?

MR. CROWLEY:

Yes. I will work quickly to get proof of payment to you.

JAN GILBERT (Progressive Leadership Alliance of Nevada):

Removal of the health care deduction would generate \$6.435 million per year. That continues year to year. If we remove that deduction, we will generate money for the State forever. This one-time amount is good for balancing the current budget. The fact that mining can take dollar-for-dollar off their MBT should mean they should not be able to take the same amount as an expense on their NPOMT. I urge you to not accept paragraph (g) of subsection 3, section 12.5 on page 6 of Proposed Amendment 7483.

SENATOR MCGINNESS:

Is there a problem if a business takes the deduction off the MBT because it pays health insurance? Do you think all businesses should do so? Do you think we should take it away from all businesses? It was meant to encourage businesses to provide health insurance.

MS. GILBERT:

I was one of the people who urged that health care be a deduction from the MBT. We want businesses that provide health care to operate here. We want to encourage them to provide health care. I agree that mining should keep that deduction. I do not agree that health care should be a deduction on the NPOMT.

SENATOR MCGINNESS:

If a business takes the health care deduction on the MBT and also on some federal tax, should we stop that too?

MS. GILBERT:

We have no control over federal income tax. We all take deductions on our federal income tax and still pay taxes in the State of Nevada.

SENATOR HORSFORD:

The issue of deductions on NPOMT never started from a budgetary standpoint. The objective was to clarify what is allowable and what is not allowable in statute and therefore in the regulatory process. The law says that some of the deductions in this amendment should not be taken by the mining industry. They are not doing us a favor by clarifying it again. The Tax Commission asked us to clarify this when we petitioned them to review the tax. Those deductions being added by Proposed Amendment 7483 need to be individually reviewed to determine whether or not it is appropriate for the NPOMT. That list is before us. Health care, development and reclamation were included because they were not previously allowed. They have been included so that we could have a policy discussion.

The structure of the NPOMT needs to be reviewed from a standpoint of reform of our revenue code for increased clarity to the industry, the public and Legislators as policy makers. The uniqueness of that tax has created the ambiguities we have been discussing. I support the industry's ability to take a deduction for the cost of employee health care. It should not produce a gain through multiple deductions against multiple revenue sources. I understand why it should be a deduction for the MBT because it is a policy set for all industries. I am not clear why the health care deduction should be included in the NPOMT and therefore in this bill.

The other elements on which we have not heard opposition are significant in closing loopholes. By addressing the out-of-state corporate expenses unrelated to the operation of a mine, we are achieving clarity and making good policy.

We need to move this legislation forward. I am not yet 100 percent comfortable with the language on page 6, lines 24 through 26 because it may be impacting us twice. I am willing to let it move forward as it stands because, at least, it is a

Senate Committee on Revenue
June 5, 2011
Page 14

benefit to the workers. I do not want to do anything that will take away those benefits from the workers.

SENATOR HORSFORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 493 WITH PROPOSED AMENDMENT 7483.

SENATOR DENIS SECONDED THE MOTION.

CHAIR LESLIE:

I want to remind Mr. Crowley I want to know the total amount the industry deducts for health care for the MBT.

SENATOR HARDY:

The oversight for the proposed Commission in section 7 of Proposed Amendment 7483 seems to be all-inclusive. I appreciate removing the political subdivision reference. It would be better if I said Nevada law would relate to subsections 1 through 5 on page 3 because those things are about mining. I will support the motion and reserve the right to change my support on the Floor.

CHAIR LESLIE:

Getting rid of the reference to "political subdivision" helps with your concern about all-inclusiveness. The language following that deletion also clarifies the intent of the authors of the amendment. The intent is not to be more overly-broad than what is actually stated on page 3 in subsections 1-5.

SENATOR HORSFORD:

To clarify my motion, and to make my intent clear to the Tax Commission, the deductions specified in section 12.5, subsection 3, new paragraph (g) are related to the operation of a mine. The language should specify that "all employees" means "employees actually involved in production or operations of the mine." This should help the argument Mr. Crowley was trying to make on the NPOMT. As the maker of the motion, I want to modify it to reflect that the Proposed Amendment 7483 include that clarification.

SENATOR MCGINNESS:

From the beginning, I have been uncomfortable with this bill. I am more comfortable now because of items in the Proposed Amendment 7483. Some

Senate Committee on Revenue
June 5, 2011
Page 15

points are still unclear, and with an interim study we can come to consensus on them.

THE MOTION PASSED (SENATOR HALSETH VOTED NO.)

* * * * *

CHAIR LESLIE:
The meeting is adjourned at 7:09 p.m.

RESPECTFULLY SUBMITTED:

Leslie Sexton
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	Russell Guindon	Mock-up Proposed Amendment 7483