

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE**

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

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:08 p.m. on Tuesday, April 5, 2011, in Room 2134 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
Brenda Erdoes, Legislative Counsel
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Tom McCoy, American Cancer Society Cancer Action Network
Beverly J. May, Campaign for Tobacco-Free Kids
Jennifer M. Hadaya, Public Health Program Manager, Washoe County Health District
Christopher Roller, American Heart/American Stroke Association, Nevada Tobacco Prevention Association
Amy Beaulieu, Director of Tobacco Control Policy, American Lung Association; Nevada Tobacco Prevention Coalition

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Michelle Gorelow, Director of Program Services, March of Dimes Nevada Chapter
Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association;
Cigar Association of America
Jim Wheeler, Nevada Legislative Action Committee; Douglas County Republican Central Committee
Trevor Hayes, FreyBoy Tobacco
Will Sabra, Tobacco Leaf
Wendy Garner, Carson Cigar Company
Sean T. Higgins, Terrible Herbst, Inc.
Guy Louis Rocha
Jim Hulse
Jan Gilbert, Progressive Leadership Alliance of Nevada
Hugh Jackson
Erin Neff, ProgressNow Nevada
Michael Flores
Craig Stevens, Nevada State Education Association
Tim Crowley, President, Nevada Mining Association
James Wadhams, Nevada Mining Association
Glenn Miller, Ph.D.
Kyle Davis, Director, Nevada Conservation League
John Hadder, Director, Great Basin Resource Watch
Launce Rake, Progressive Leadership Alliance of Nevada
Carole Vilardo, President, Nevada Taxpayers Association
James Richardson, Nevada Faculty Alliance

CHAIR LESLIE:

We will open the hearing on Senate Bill (S.B.) 386.

[SENATE BILL 386](#): Makes various changes concerning the taxation of certain tobacco products. (BDR 32-869)

TOM MCCOY (American Cancer Society Cancer Action Network):

I have my prepared testimony ([Exhibit C](#)). Senate Bill 386, sections 2 and 4, increases the amount of tax levied upon the purchase or possession of cigarettes by a consumer in the State. Section 6 increases the amount of tax on products made from or containing tobacco other than cigarettes from 30 percent wholesale price to 60 percent wholesale price. Section 5 explains the products that are made from or containing tobacco other than cigarettes for

which taxes are imposed. Section 11 revises a credit for unsold amounts of products to correspond to the increase that is in the bill. Sections 3 and 12 revise the allocation of tax revenue from cigarettes and products made from or containing tobacco to include a 10 percent distribution of tax revenue to the Department of Health and Human Services for programs on prevention, cessation of tobacco use and future research. Section 15 requires payment of the increased amounts of taxes imposed by the bill on inventories of tobacco products and revenue stamps held by dealers on the effective date.

BEVERLY J. MAY (Campaign for Tobacco-Free Kids):

The opportunity for Nevada is a win for public health, knowing that by delaying the onset of smoking would be a positive for public health in Nevada ([Exhibit D](#)). A consistent funding stream of approximately \$76 million is possible. Our polling information shows 71 percent of voters favor a health impact fee of \$1.20 per pack. On July 1, 2003, tobacco was increased from 35 cents to 80 cents per pack, and the State generated \$60 million in new revenue. The \$1.20 health impact fee will generate \$76 million, which is a conservative estimate. After Utah increased its cigarette tax by \$1 per pack on July 1, 2010, revenues increased by 85.9 percent. Compared to the same period, Nevada's revenue decreased by 4.3 percent. The opponents will argue the health impact fee will lead to lost jobs, but a 13-year study by the University of Illinois at Chicago's Dr. Frank Chaloupka determined it will not. The study also found there could be a slight increase in convenience store revenue. The fee will keep almost 22,000 kids in the State from becoming smokers. In my opinion, opposing this legislation will keep kids addicted to smoking. This proposal will save thousands of lives but will increase needed revenue for the State.

JENNIFER M. HADAYIA (Public Health Program Manager, Washoe County Health District):

We are in support of S.B. 386. My handout ([Exhibit E](#)) shows increasing the price of tobacco has significant public benefit because raising the price of tobacco by \$1.20 and other tobacco products as laid out in S.B. 386 will see the percentage of adult and youth smokers reduced. This will have a large impact on the public health in the State. Smoking rates across the country have declined; Nevada's rates are above national averages. Twenty-two percent of adults in the State are daily smokers and 10 percent of our youth, 12- to 17-year-olds, are daily smokers. Nevada has the third highest rates of death attributable to smoking in the Country which equates to 3,300 premature deaths in the State. Smoking is 100 percent preventable, and we know what

works to prevent tobacco use. Decades of systematic reviews of the program and research on reducing tobacco rate has shown increasing the price is the most proven method to reduce the rates. For every 10 percent the tobacco rate is increased, there will be a 4 percent reduction rate among adults and a greater reduction rate among children. Increasing the tax does two things: it prevents new smokers from starting and helps current smokers to quit. Page 2, [Exhibit E](#), shows that in 2003 the State tax on cigarettes was increased by 45 cents; the following year, the percent of adult smokers dropped by almost 8 percent. The only other year with a comparable one-year decrease occurred after the tobacco Master Settlement Agreement of 1998 was adopted. Raising the price of cigarettes by an additional \$1.20 will reduce adult and youth smoking, and the premature death rate will be reduced. We urge this Committee to pass S.B. 386.

SENATOR HALSETH:

You testified that in 2003 we increased taxes 40 cents. Is that correct?

Ms. HADAYIA:

In 2003, we increased the tax by 45 cents to a total of 80 cents.

SENATOR HALSETH:

You want to increase it from 45 cents to \$1.20 and make an increase to all tobacco products?

Ms. HADAYIA:

The proposal in S.B. 386 is an additional increase of \$1.20 in the tax and an increase in the percent of wholesale price of other tobacco products (OTPs) to 60 percent.

SENATOR HALSETH:

Why is it such a large increase?

Ms. MAY:

The states surrounding Nevada have increased their prices; in fact, 41 states have increased their prices since Nevada increased its tax in 2003. We need to have an impact on delaying onset of youths starting to smoke.

SENATOR HALSETH:

You stated the increase in the tax would discourage people from smoking. Do you have solid evidence that youths will stop smoking? Education might be better than increasing fees.

Ms. MAY:

We can furnish you the information. We have found in studies that youths and adults are sensitive to price.

SENATOR HARDY:

The chart on page 2, [Exhibit E](#), shows from 2001, the rate of smokers is on a steady decline.

CHRISTOPHER ROLLER (American Heart/American Stroke Association; Nevada Tobacco Prevention Coalition):

We support S.B. 386. I will cover a few key points of my testimony ([Exhibit F](#)). Smoking is the leading preventable cause of disease and death in Nevada. Senate Bill 386 is the most significant bill ever presented to the Nevada Legislature in terms of the potential positive impact toward reducing this burden. By significantly increasing our taxes on cigarettes and OTPs, Nevada's Legislature will save the lives of Nevadans and reduce health care costs in both the public and private sectors. Higher prices for tobacco products have been proven time and again to reduce consumption, especially among youth. By reducing the level of the extremely expensive diseases associated with smoking, it in turn frees up dollars and reduces the need for revenue from other streams. Some of the diseases associated with smoking are heart attacks, coronary heart disease, strokes, lung cancer, cancers of mouth and throat, emphysema, diabetes, asthma and chronic obstructive pulmonary disease.

The reduction of costs to the State due to the reduced burden of these diseases and the reduced cost of Medicaid and other public health costs will lessen the need for further tax increases in other areas. Page 3, [Exhibit F](#), shows the effect of increased revenue and reduced smoking. The other handout ([Exhibit G](#)) highlights where Nevada ranks with other states on cigarette tax rates. The strain of health care costs on our families, our businesses and other state services can increase to the breaking point; we need to take action to reduce the No. 1 preventable factor in these costs. As has been shown, raising tobacco taxes is both sound health and fiscal policy. Adam Smith, from his book *The Wealth of Nations* in 1776, stated "sugar, rum and tobacco are

commodities which are nowhere necessities of life, and which are therefore extremely proper subjects of taxation."

AMY BEAULIEU (Director of Tobacco Control Policy, American Lung Association; Nevada Tobacco Prevention Coalition):

I have written testimony ([Exhibit H](#)) with a few additional comments. We receive questions on the tobacco Master Settlement Agreement dollars and whether that is funding current programs. During the Twenty-sixth Special Session, the monies were swept from the 16 tobacco control programs, which we were part of. The earmarks in S.B. 386 will restore dollars to the funds, allowing the State to continue with programs of prevention and education for youths and adults.

MICHELLE GORELOW (Director of Program Services, March of Dimes Nevada Chapter):

I have submitted my testimony ([Exhibit I](#)). The mission of the March of Dimes is to improve the health of infants and children by preventing birth defects, premature birth and infant mortality. In line with our mission, we are strong advocates for tobacco control initiatives. Active cigarette smoking or exposure to secondhand smoke can be unhealthy for pregnant woman and infants and is one of the leading preventable causes of premature birth.

Premature birth is defined as a baby born prior to 37 weeks gestation. Babies born preterm can face a lifetime of challenges, including cerebral palsy, mental retardation, blindness, deafness, and learning and behavioral challenges. It is the leading cause of death for babies during the first month of life. Increasing tobacco taxes have proven to decrease the overall smoking rates. Studies also show that women who stop smoking before becoming pregnant or early in pregnancy decrease their rate of having low-birth-weight babies to nearly that of women who have never smoked.

If Nevada's tax rate was increased \$1.20 per pack, there would be approximately 3,050 fewer affected births over five years with a savings of \$5.2 million. In 2009, 21.9 percent of women between the ages of 18 to 44 in Nevada reported smoking. Most women who smoked during pregnancy were 20 years old or younger. Smoking affects over 3,600 births each year in Nevada, with related health costs of approximately \$6.2 million.

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In conclusion, the March of Dimes Nevada Chapter strongly supports S.B. 386, increasing the tobacco tax for these reasons. This is an opportunity to improve tobacco control and maternal and child health in Nevada.

SENATOR HALSETH:

You have stated this is a revenue bill and will curb tobacco use as well. If this bill is to stop people from smoking, how will the revenue be collected?

MR. ROLLER:

We can get the information for you. The tax increase of \$1.20 outweighs the people who will quit or reduce their consumption because of the increased price. The percentage of people quitting and cutting down is not enough to reduce the revenue; there will be an overall increase in revenue.

SENATOR HALSETH:

I am concerned this increase will have a negative impact on the Millennium Scholarship.

MS. BEAULIEU:

The Millennium Scholarship is funded through the tobacco Master Settlement Agreement, but the tobacco tax could go into the General Fund or however the Committee designates. They are two separate revenue sources.

CHAIR LESLIE:

We have written testimony submitted to the Committee from the Southern Nevada Health District ([Exhibit J](#)), the Nevada Cancer Institute ([Exhibit K](#)), and from Fairbank, Maslin, Maullin, Metz and Associates ([Exhibit L](#))—we will make them part of the record.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Store Association; Cigar Association of America):

I would like to address the tax implications of S.B. 386 that mentions the “little cigar,” which is not a cigarette by federal definition. The rates of taxation on little cigars are different than on cigarettes.

CHAIR LESLIE:

What part of the bill are you referencing?

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MR. KRUEGER:

Section 1 attempts to redefine or to include in the definition of a cigarette what is correctly called a little cigar.

CHAIR LESLIE:

That is captured in the new definition.

MR. KRUEGER:

I oppose S.B. 386. A little cigar is wrapped in 100 percent tobacco leaves, not paper, and consists of two-thirds tobacco products. The filter consists of air-cured tobacco fillers, and the packaging and label information clearly identify them as cigars. The revenue increases on this measure are overstated. The reason taxation revenue increased is because people stopped smoking or in many cases switched to other sources, the Internet or the black and gray markets. Whereas federal law may prohibit the sale of cigarettes on the Internet, it simply is not being enforced. The point is that to make little cigars into cigarettes defies federal law and statute as well as raising the wholesale price by 60 percent. This will largely impact the end user.

JIM WHEELER (Nevada Legislative Action Committee; Douglas County Republican Central Committee):

This is a bill to raise taxes, which is why I am opposed. The other issues I am concerned about are the 150 percent increase on cigarettes, the merchants being taxed on their inventory and tribes being exempt from these taxes. The bill would create further disparity and competition in the marketplace, giving one class of people a gain in favor of another class. The marketplace should dictate business practices. All of the organizations I represent are opposed; it makes us wonder where it ends.

TREVOR HAYES (FreyBoy Tobacco):

I would like to address the OTP portion of the bill. Senate Bill 386 raises the tax from 30 percent to 60 percent of the wholesale price. FreyBoy Tobacco has eight retail stores selling premium cigars in southern Nevada. My opposition to the bill is that 50 percent of premium cigars are purchased online or by catalog nationally. We have one of the largest tribal smoke shops in the Country in Las Vegas, and when we raise taxes on premium cigars, consumers turn to tribal shops or the Internet instead of shopping in stores. My client is in danger of closing six of his eight stores and laying off 35 of his employees if the tax increase is passed. My suggestion would be for your Committee to review what

is happening on OTPs in other states. In 2002, Oregon had a 65 percent tax on OTPs, but it broke out premium cigars and capped them at 50 cents per cigar. In 2002 before the cap, Oregon brought in \$6 million in revenue, and in 2008, \$9.8 million. Washington, also capped at 50 cents, brought in \$7.5 million in revenue in 2004 and in 2008, \$8.5 million. Wisconsin brought in \$5.25 million in revenue in 2007 and in 2008, \$8.9 million. With the 50-cent cap, consumers will shop local retailers to buy cigars instead of shopping online.

WILL SABRA (Tobacco Leaf):

I own Tobacco Leaf stores in Las Vegas, which are located off The Strip. My specialty is OTPs, and raising the OTP tax by 60 percent will affect my business and my six employees. My customers will be pressured to shop the Internet for their cigars with no tax liability. I would be in favor of the 50-cent cap on cigars.

WENDY GARNER (Carson Cigar Company):

My comments are directed to the OTP. We were affected by the State Children's Health Insurance Program (SCHIP) and had to increase premium cigars by 45 cents—our sales plummeted. Senate Bill 386 is proposing to raise the OTP tax from 30 percent to 60 percent. This legislation will have an impact on my business and its employees. The bill gives no consideration to potential loss of sales on OTP products. Our customers will stop buying cigars from local merchants and buy them off the Internet. We are opposed to S.B. 386.

SEAN T. HIGGINS (Terrible Herbst, Inc.):

Terrible Herbst operates 100 service stations in Nevada. Cigarettes and tobacco products are a large part of our business and over 35 percent of our revenue. The sales of tobacco and tobacco-related taxes are down nationwide on average of 3.7 percent over the last ten years. In Nevada from 2008 to 2010, sales decreased 12 percent and 8.7 percent respectively. In our stores, 60 percent of our customers who buy cigarettes also purchase other products. If we have fewer shoppers, our sales will be affected because of less traffic.

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CHAIR LESLIE:

I will close the hearing on S.B. 386 and open the hearing on Senate Joint Resolution (S.J.R.) 15.

SENATE JOINT RESOLUTION 15: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

BRENDA ERDOES (Legislative Counsel):

This bill repeals section 5 of Article 10 in the Nevada Constitution and amends section 1 of Article 10 to remove a special provision for proceeds of mines from the Article on taxation in the Constitution. It also removes the reference "mines and mining claims, which shall be assessed" only as provided in section 5. It leaves the Legislature free to tax mines and mining proceeds in the manner as currently taxed. If the amendment is passed by the Seventy-sixth Session of the Nevada Legislature and the 2013 Session, the provision would be voted on by the people at the next general election or a special election. If approved by the voters, the constitutional change would be effective upon canvass, which is the third week in November after the general election. The taxes on mining would remain the same until the Legislature made a change to chapter 362 of *Nevada Revised Statutes* (NRS) to change the manner in which the taxation is applied to mining.

CHAIR LESLIE:

If this were passed this Session, nothing would change in terms of how taxes are paid by the mining industry.

MS. ERDOES:

That is correct.

CHAIR LESLIE:

If it were passed again the second time in 2013, nothing would change.

MS. ERDOES:

That is correct.

CHAIR LESLIE:

If approved by the voters, nothing would change unless the Legislature changed the way mining was taxed.

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MS. ERDOES:

That is correct, NRS 362 is the statute that would implement this provision when changed by the Legislature.

CHAIR LESLIE:

Any question for Ms. Erdoes?

GUY LOUIS ROCHA:

I have provided written testimony ([Exhibit M](#)) and have also included information from David A. Johnson, professor, Portland State University ([Exhibit N](#)).

JIM HULSE:

I have provided my testimony ([Exhibit O](#)). Senate Joint Resolution 15 is an excellent and long overdue proposal to amend the Nevada Constitution. It would close the tax loopholes that mining companies have enjoyed since the founding of Nevada as a state. Since the beginning, the so-called Net Proceeds of Minerals Tax has been a shell game, working to the advantage of the mining companies and against Nevada taxpayers. The mining industry has been a sacred cow in Nevada since the beginning of our State history. Tax exemptions were written into the State Constitution at the insistence of the mining barons of 1864. Over the decades, the representatives of the voters assembled in Carson City have not dared to restrict the free-roaming exploitation and pollution of our state until now.

This may be the most important constitutional amendment that will come before this busy session of the Legislature. The Fraser Institute, based in Canada, makes annual reports to mining industry investors about the most profitable places in the world to enjoy profits in mining. According to recent Fraser records, for many years Nevada has been one of the most promising jurisdictions in which to do business because of this State's low taxes and permissive environmental regulations. In 2009-2010, Nevada was easily the best target in the United States to mine and carry the profits away.

If this Session of the Legislature can pass S.J.R. 15, and if the next Session will do the same, then the voters of Nevada will have the opportunity to express their will on this proposal in 2014. That will be the 150th anniversary of statehood. It is time to allow the voters to take another look at the privileges our predecessors gave to the mining industry.

JAN GILBERT (Progressive Leadership Alliance of Nevada):

No other industry has the protection mining has in the Nevada Constitution. Mining should be treated the same as all other businesses and should be taxed on the gross like gaming. The Net Proceeds of Minerals Tax does not register on the State's tax pie chart. It is alarming to see the cuts going on which will devastate the State. Cuts will set the Nevada System of Higher Education back many years, with professors and teachers being laid off, public education kindergarten through Grade 12 is being dismantled and human services being cut. When the Governor speaks about shared sacrifice, we should also include mining. Four of the five major mines are foreign-owned, so they take their profits back to their home countries. This legislation will level the playing field by making this change to the Constitution.

Voters will want to decide. A recent poll completed by state employees shows 75 percent of the people surveyed supported increased taxes on mining. The list of allowable deductions include advertising, consultants, company meetings, bonuses, cash awards, leases and rentals, sales and use tax, selling expenses, severance packages, travel, and management fees. This list was not intended to be used in calculating the Net Proceeds of Minerals Tax. The original intent was for the cost of getting the gold out of the ground.

SENATOR HALSETH:

What is going to happen to Eureka? Because of mining revenue, Eureka does not require State support.

MS. GILBERT:

Eureka is well-funded. In 2008, the State received \$40 million from the Net Proceeds of Minerals Tax, and the mining companies posted \$5.7 billion in profits. Eureka will have to manage its County as the State has done over the years.

CHAIR LESLIE:

I would like to have legal counsel respond on how the rural counties benefit from the provisions in the Constitution and how they would be affected by this legislation.

MS. ERDOES:

If S.J.R. 15 passes two sessions of the Legislature and is voted on by the people, nothing would change. The taxes would be distributed and the Net

Proceeds of Minerals Tax would be collected in the same manner that it is currently. It would be up to the next Legislature to review how monies are distributed to Eureka County and determine if changes are needed.

SENATOR HALSETH:

My concern is how this will affect the State in the future. Supporting northern Nevada is one of my priorities, and mining is important because of the revenue income. How will this negatively impact northern Nevada in the future if we change the tax structure?

CHAIR LESLIE:

Your question would be better directed to the opponents of the bill.

MS. GILBERT:

The Legislature will decide what will happen on the mining taxes after it is voted on by the people. Mining pays so little into the General Fund, yet its profits are as much as those of gaming. Every business, including mining, pays its taxes, but it is unfair to take the profits and have the State benefit so little from a nonrenewable resource that will be depleted someday. Mining should be paying while it is here.

CHAIR LESLIE:

I am going to take testimony from Las Vegas.

HUGH JACKSON:

I have done freelance writing and research on Nevada mining taxation. I have provided the Committee with a chart ([Exhibit P](#)). I support removing the mining language from the Constitution to allow the Legislature the flexibility to treat the industry the same as any other industry. Nevada's tax policy is not in the State's best interest—underestimating the importance of Nevada to the global gold mining industry while overestimating the importance of Nevada's insignificant mining tax to the company's financial performance. A world-class industry's contribution to the General Fund is about the same as the car rental tax.

I would like to cover a comparative example, [Exhibit P](#), which will suggest why the mining tax should be stripped of its unique constitutional protection, so that Nevada can craft tax policy that better serves its people. Nevada is the Nation's leading producer of gold and one of the leading producers in the world. The first

chart, [Exhibit P](#), shows Nevada's 5 percent Net Proceeds of Minerals Tax. About one-half goes to the State and the balance to the counties where the mineral is mined. The total mineral tax burden on Wyoming coal, oil and gas producers can be as high as 25 percent to 30 percent; Nevada's total burden is capped at 5 percent. In 1974, Wyoming changed its constitution and created a permanent mineral trust fund and mandated that a portion of the severance tax revenue be deposited in the permanent fund each year.

In 2009, Wyoming's permanent fund contributed \$135.2 million to the general fund. It is more than is contributed by the State and counties combined by Nevada's entire mining tax burden. The second chart highlights the taxable value of Wyoming's minerals. In 2009, the value was seven times larger than Nevada's, but total mineral revenue of \$2.37 billion was 24 times larger than Nevada's \$97.6 million. The third chart, shows Wyoming's mineral industry paid \$1.55 billion in 2009, about 16 times the amount derived from Nevada mineral taxation on a taxable value that was seven times as big. It is within the authority of the people of Nevada to institute a tax system that imposes a State mineral tax while also allowing counties to levy separate gross product taxes on mineral production. Nevada can establish taxes at a rate that reflects the mining industry's importance to Nevada but also the industry's obligation to Nevada—if the mining tax were taken out of the Constitution.

ERIN NEFF (ProgressNow Nevada):

We appreciate and support S.J.R. 15, which removes the mining tax from the Constitution. Nevada members support this measure and look forward to voting on it. We urge you to pass S.J.R. 15.

MICHAEL FLORES:

I appreciate your talking about a solution to Nevada's budget issue. As a student at the University of Nevada, Las Vegas, having to pay more for classes, I say mining should be able to pay more. Changing the tax in the Constitution would be best for Nevada because of the long-term effects. Many of my student friends are in support of this bill.

CRAIG STEVENS (Nevada State Education Association):

We support S.J.R. 15, which would allow the citizens of the State to benefit from the resources that are rightfully theirs. Our schools are hurting, and Nevada has the right to determine its own course when it comes to mining. The profits to mining are immense, and so are the cuts to education over the last

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few years. Which resource is the State's priority, a mineral which will be depleted or the children who will lead this State to a more diversified and stronger economy?

CHAIR LESLIE:

We will move to the opponents of the bill.

TIM CROWLEY (President, Nevada Mining Association):

We are neutral on S.J.R. 15. We understand there is a misperception on what the Net Proceeds of Minerals Tax does and how it is applied in Nevada. Our intent today was to learn more about S.J.R. 15 and where it goes because of the long process of changing the Constitution.

CHAIR LESLIE:

Did you have any issue on how legal counsel described the process or the fact that the taxes would continue until or unless the Legislature changed them in statute?

MR. CROWLEY:

That was a very helpful piece of information.

SENATOR HORSFORD:

Can you or other members from the industry give us an understanding as to how the tax structure imposed on mining came to be? This is the most common question I get, and I have to tell my constituents that the Legislature does not have the authority to adjust the tax because it is part of the Constitution. The Net Proceeds of Minerals Tax is much different than the Wyoming example that we were just given.

MR. CROWLEY:

Mining taxes have been changed by this body. The first example was in 1989 when the Net Proceeds of Minerals Tax through a constitutional amendment was taken from the county property tax rate to the maximum property rate of 5 percent. This was the first time the State had a split roll and decided that one taxpayer would pay a higher property tax rate than others.

SENATOR HORSFORD:

Would you explain the rationale in that counties would receive 48 percent to 50 percent to the portion that goes to them?

MR. CROWLEY:

Prior to 1989, the counties received 100 percent of the property tax that was assessed on mines through the Net Proceeds of Minerals Tax. All property tax went directly to the counties. After the constitutional amendment, the increment between the county rate and 5 percent now goes to the State. It is about a 50 percent split because the property tax rates in rural Nevada are \$2.50 per \$100 of assessed valuation. Half of what we pay in the Net Proceeds of Minerals Tax goes to the local communities and half to the State.

Continuing with your first question, the other way mining taxes have been adjusted is through conventional tax changes. The 2003 tax change creating the Modified Business Tax impacted the mining industry. The tax change in 2009 through temporary increases of tax impacted the mining industry in 2010. Through conventional taxes, the Legislature is able to change the tax obligation that mining pays the State.

SENATOR HORSFORD:

If a more broad-based tax were imposed on all other industry, mining would pay the taxes accordingly.

MR. CROWLEY:

We would support a broad-based business tax.

SENATOR HORSFORD:

You talked about the Modified Business Tax. What are the specific types of taxes you pay?

MR. CROWLEY:

We pay roughly \$100 million in conventional business taxes: sales taxes, Modified Business Tax, payroll tax and property taxes on our facilities. We pay another \$100 million on Net Proceeds of Minerals Tax. Of the conventional business taxes, sales taxes are the largest portion we pay because of the equipment and the sophisticated machinery we purchase, whether in state or out of state.

SENATOR HORSFORD:

Even if the product is purchased out of state.

MR. CROWLEY:
Yes, sir.

SENATOR HORSFORD:
What do you say to the suggestion by Mr. Jackson that our tax on the mining industry is not comparable to Wyoming's? How would you respond to information that shows rates are not comparable?

MR. CROWLEY:
They are not comparable because coal mining companies are extracting a product that is in product form and they pass their tax obligation to the utilities, which is absorbed by the end user. Hard rock mining of gold is not comparable in that we are mining microscopic gold that is embedded in rock and then sold to get into a product form. We are unable to pass on our cost of production, overhead or taxes onto the consumer.

SENATOR HORSFORD:
Can you explain the language "until it is lost?"

CHAIR LESLIE:
I found it in the text of the repealed section 5, subsection 1, which reads "no other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost."

SENATOR HORSFORD:
What does that mean, and why is it in the Constitution?

JAMES WADHAMS (Nevada Mining Association):
It is the provision that prevents double taxation of the same property. There is value to the mineral. You can tax it once but not twice. Once it is converted into cash, its identity as a mineral is lost; it is green and not gold and could be taxed again. The reason that language was placed into the Constitution was to prevent the mineral from being taxed more than once.

SENATOR HORSFORD:
Wyoming imposes gross proceeds and a severance tax. Why is it applicable there and not in Nevada?

MR. WADHAMS:

I am not in a position to speak on the Wyoming law, but I will look into it. We have reviewed the comparable burden in various states that shows the relative burden on taxation for comparable hard rock mineral mining in the Western states. The disparity is smaller than Mr. Jackson finds by comparing coal to a hard rock mineral.

SENATOR HORSFORD:

I would like to know why Wyoming is permitted to assess both gross proceeds and a severance tax. Our constitutional language prohibits us from imposing any tax upon a mineral or its proceeds until the identity of the proceeds is lost. The Legislature is not permitted to assess anything other than a broad-based solution. The constraints on the Legislature and Executive Branch reduce our ability to make changes because of the constitutional limitation that exists. Outside of a constitutional change, the only other option would be to establish a broad-based solution where the mining industry would be treated in the same manner as all the industries in Nevada. It is important that we as a Legislature and the public understand we are limited. It is either lift this constitutional restriction which takes five to six years, or find a broad-based solution that treats the mining industry along with other companies in a way that allows you to contribute so that we do not have that restriction.

MR. CROWLEY:

That is our understanding, and that would be a process available. If you look at the 2003 Legislature and how the mining industry was taxed in a broad-based way, we would be treated like any other business if you were to pass another broad-based tax.

MR. WADHAMS:

Other pieces of the Constitution need to be identified. Article 10, section 2 states "The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation." That is a 5 percent cap on property tax on all property, so we have a constitutional cap on property tax at 5 percent. In 1987, S.J.R. No. 22 of the 64th Session addressed the ad valorem rate, which was less than 2.5 percent and the Legislature amended the Constitution to increase the property tax obligation of the mining companies to the maximum 5 percent which appears in Article 10, section 2. The problem the Legislature faces is this type of property is maxed out under other sections of the Constitution.

CHAIR LESLIE:

Gold is at an all-time high, and the voters want to know why the State cannot benefit in this situation.

MR. CROWLEY:

The State is benefiting in a variety of ways; taxes on minerals have grown by five times in the last ten years. The information I have furnished to the Committee was a chart that shows the gold prices parallel with tax contributions paid the State. I can resubmit it.

SENATOR MCGINNESS:

In [Exhibit N](#), William M. Stewart, counsel for the San Francisco financiers who directed the largest Comstock mines, recognized no distinction between interest and ideals. Stewart saw in statehood an opportunity to remove the foremost obstacle blocking his clients' efforts to extend their control over the Comstock Lode. A major issue in the second Constitutional Convention, the tax question divided the population between those with a direct financial interest in the mines and those farmers and merchants without an interest. The guys who were able to draft the language in the Constitution won the battle. The same political issues are going on today,

MR. WADHAMS:

Article 10, section 1, subsection 2 was added to the Constitution as an exemption from property tax for shares of stock, which would have been the vehicle the investors in San Francisco would have utilized.

SENATOR HORSFORD:

My question is for staff. What is the split between the State and the counties in the Constitution?

MS. ERDOES:

It is contained in subsection 2 of the repealed section. It provides the amount of the current tax rate for local governments is applied to the taxes and the remainder, which can go to \$5, then goes to the State. It cannot be changed because it is in the Constitution.

SENATOR HORSFORD:

Our obligation is to balance the budget in responsible ways because the Constitution prohibits change until a vote from the people.

CHAIR LESLIE:

I agree with those comments. This is about giving the Legislature the flexibility to adjust over time. Taxation in the Constitution is not good public policy. The hearing is closed on S.J.R. 15 and I will open the hearing on Senate Bill 493.

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

JOE REEL (Deputy Fiscal Analyst):

Senate Bill 493 creates the Mining Oversight and Accountability Commission, consisting of seven members, each serving two-year terms. Three members will be appointed by the Governor, two members by the Majority Leader of the Senate and two members by the Speaker of the Assembly. The Majority Leader and Speaker will need to ensure that not more than two members are appointed from any one county and not more than two members have a direct or indirect financial interest in the mining industry.

Section 6 provides for the organizational structure of the Commission. The Commission will elect a Chair and Vice Chair from its members, who would meet once each calendar quarter on the call of the Chair. The Department of Taxation would be assigned to provide technical, clerical and operational assistance to the Commission. Section 7 establishes that the Commission shall exercise plenary oversight of the activities of each State agency, board, commission, department, division or political subdivision in connection with the taxation, operation, safety and environmental regulation of mines and mining in the State.

The Commission, within that authority, shall exercise oversight of the Nevada Tax Commission and the Department of Taxation in the administration of the Net Proceeds of Minerals Tax pursuant to NRS 362; the Division of Industrial Relations of the Department of Business and Industry in administering the provisions of NRS 512; the Commission on Mineral Resources and the Division of Minerals of the Commission, under NRS 513 and 522; the Bureau of Mines and Geology of the State of Nevada in the Public Service Division of the Nevada System of Higher Education, NRS 514; and the Division of Environmental Protection of the State Department of Conservation and Natural Resources, NRS 519A.

Section 8 highlights information that would be provided by the entities overseen by the Commission at its meetings. Section 9 authorizes the Chair to conduct investigations and hearings of the Commission, administer oaths, cause the deposition of witnesses and issue subpoenas to compel the witnesses to appear and produce subpoenaed books and papers. Section 11 establishes that the Commission may request the Legislative Commission to direct the Legislative Auditor to undertake—or to contract with a qualified accounting firm to undertake—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.

Section 12 establishes that certain specified regulations adopted by the Nevada Tax Commission, the Division of Industrial Relations, the Commission on Mineral Resources or the State Environmental Commission would not be effective unless approved by the Mining Oversight and Accountability Commission. Section 15 would require the Administrator of the Division of Minerals to attend each regular meeting and, upon request, the special meetings of the Commission. Section 16 requires the Director of the Bureau of Mines and Geology to attend the meetings.

Section 17 requires the Department of Taxation to submit 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. This act would be effective upon passage and approval.

SENATOR HALSETH:

Does any other commission allow the Senate Majority Leader and Speaker of the Assembly to appoint members to a commission?

MS. ERDOES:

We do have a number of commission boards and other Executive Branch agencies that have members appointed by leadership of the Legislature. We believe it is constitutional.

SENATOR MCGINNESS:

Usually we have restrictions on the makeup of how many from each political party.

MS. ERDOES:

That is an option. I have seen it in other commissions where political parties were balanced.

CHAIR LESLIE:

We will start with the proponents of the bill.

GLENN MILLER, Ph.D.:

I am testifying in support of S.B. 493. I have been concerned about the environmental impacts of mining and was a participant during the 1989 discussions on a reclamation bill for Nevada. Over the years, I have become concerned about the lack of oversight on mining. The industry has changed. Further oversight is appropriate and necessary. We need to know the mineral potential, the long-term success of the industry and the jobs that are to be created. The Legislature needs to have a better understanding on the minerals that will be available. The Mining Oversight and Accountability Commission would be an excellent way to provide sound information over the long term and in a comprehensive manner.

This Commission will be able to ask the hard questions that need answers as you have done with the auditing function. The following questions would be answered by the Commission: why are there no audits from the Department of Taxation, what is the best method for developing information on how the industry should be taxed, and what is reasonable for taxing the net proceeds. These agencies would be expected to develop information on what is the potential for minerals in the State and what types of minerals are on the horizon, which would be provided on a yearly basis. Mine safety comes under the Division of Industrial Relations, which regulates the mining industry, recognizing Nevada has had deaths in mining over the past several years. Is mercury in the workplace being managed efficiently, is it even being measured? We have no new standards for mercury exposure since the 1970s. Few industries have this problem, but gold mining is one of them.

The Division of Minerals has an excellent program on closure of historic mines, but deaths continue to occur. What additional authority and regulatory programs are necessary for improving the safety record? There have been good jobs done on environmental impacts and reclamation, but a comprehensive overview of mine closure is needed. New questions have come since 1989 when the legislation was passed. How is the mining industry affecting surface and

groundwater? Drainage from heaps, tailings facilities and waste dumps are common problems that were not recognized as issues in 1989. We will have more water in pit lakes than all the manmade reservoirs in the State. This is a major water resource allocation. What will be the recreational resource? How will the pit lakes be managed, and who will be responsible for ensuring the safety? This Commission is a good idea and has my support.

CHAIR LESLIE:

I have a question on the Superfund site and the problem in Lyon County. How is it going to get cleaned up? If we had the Mining Oversight Commission, we could hold a public hearing and not have the decision made behind closed doors. Do you share that view?

DR. MILLER:

I would support your view. Lyon County's site should be designated a national priority site because the Division of Environmental Protection (DEP) does not have the staff. It requires a lot of expertise and the U.S. Environmental Protection Agency has the authority under the Superfund to clean it up. This situation should be part of the Commission.

SENATOR HORSFORD:

Do you see anything in the bill that would weaken or interfere with existing divisions in maintaining their responsibilities or functions?

DR. MILLER:

All I see in the bill is the Commission asking for information and having oversight. I have no comments on the taxation issues. On the environmental side, it could be helpful as a public forum for discussion of mining issues.

SENATOR MCGINNESS:

The Counsel's Digest states "... 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." Do you see this as having oversight, would DEP, and a portion of the Department of Taxation come under this as well?

DR. MILLER:

The taxation issues are beyond my areas of expertise. The DEP would not change its regulations but would look to the Commission to make sure its

questions were answered. This is the Commission's function on the environmental and safety aspects.

KYLE DAVIS (Director, Nevada Conservation League):

We are in support of S.B. 493. We favor the public access component because of mining and the environmental impacts that may come. These mines are on public lands and do have impact on the land use of recreation and wildlife habitats. We support the idea of having a one-stop shop for citizens to get questions answered about impacts that may occur and any other issues that come up as they relate to the mining industry.

SENATOR HORSFORD:

Do you see one place that all regulations have to go through as a better process for the conservation community to monitor?

MR. DAVIS:

The simple reason is the environmental community in Nevada is not large and not well-funded. Anything that makes it easier for citizens to track information will help them stay informed.

JOHN HADDER (Director, Great Basin Resource Watch):

Our organization represents hundreds of people across the State and has been working since 1994 on mining issues. We support S.B. 493. I have furnished information ([Exhibit Q](#)) and will cover a few highlights from the handout. With the renewed interest in mining, we have received many questions concerning the old Comstock area. This is a good example of where people would have a forum to get information. One of the impacts of mining is the ViewSpace of Nevada. One of the areas is the East Pequop Range, of which a photo is included in [Exhibit Q](#). It is typical of the Great Basin landscape and could be affected by exploration and future mining. Mercury is a toxic material, and tens of thousands of tons have gone into the Nevada skies. We have elevated levels of mercury found in reservoirs in the northeastern part of the State. We have a Nevada control program on mercury, but there are other sources of information about emissions from mercury coming off waste rock and leaching and tailing facilities.

The Yerington mine has contamination underground that is 3 times the level of uranium and 50 times the level of arsenic established by Environmental Protection Agency standards. This Commission will be of great value in helping

ferret out how to proceed. The State will have help financially with some of the cleanup. There are water quality issues at Mule Canyon, Phoenix, Coeur Rochester, Rain, Hollister, Twin Creeks, Big Springs and Jerriitt Canyon. In the case of Jerriitt Canyon, acidic drainage and leaking tailings impoundments have contaminated tributaries to both the Owyhee and Humboldt Rivers.

CHAIR LESLIE:

We need to move on, but we have your written testimony, [Exhibit Q](#).

MR. HADDER:

The economy of rural Nevada is either boom or bust in many cases. There is a large molybdenum mine proposed at Mount Hope. I would like to quote from Jim Evans, Eureka County planner and development coordinator: "I think the majority of people who live here would rather not see any significant population increase. We're certainly not in a position to sustain a lot of growth, and we've developed a fairly comprehensive planning initiative to deal with it." It is not true that all rural counties want to see the continuing boom or bust economy.

MS. NEFF:

If there is a five times increase of the Net Proceeds of Minerals Tax since 2001, it gets us to a tax rate of 0.5 percent. It seems to me this industry has done everything imaginable to deduct itself out of tax responsibility, and this Commission will help in properly auditing the industry.

LAUNCE RAKE (Progressive Leadership Alliance of Nevada):

This Commission would be broad-based geographically and politically. It would allow leadership from the Senate and Assembly as well as the Governor's Office to participate. Among my concerns are the problems that have developed with the spill in Yerington because the State does not have \$4 million, as stated by the Governors Office, to contribute to the federal government's \$40 million that is required to clean up the toxic soup. This Commission would have the breadth and oversight to respond to these situations and be able to look forward to the integration of safety, fiscal and environmental concerns.

CHAIR LESLIE:

Do we have any testimony from the opponents of the bill?

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CAROLE VILARDO (President, Nevada Taxpayers Association):

I am neutral on the bill, but I need clarification. Section 12, subsection 4 states "is not effective unless it is approved by the Mining Oversight and Accountability Commission." Permanent regulations are drafted by Legislative Counsel and approved by the Legislative Commission's Subcommittee to Review Regulations. Does the language in the bill apply before the fact or after the fact?

MS. ERDOES:

I understand that during the time the agencies are putting together other regulations, they would consult with the Commission. The Commission would approve the regulation before it came through the balance of the process. We left it open to have more flexibility—it would be more like a subject matter review as to what should be included in the regulation and how it would work than a legal authority type review, which is done by the Subcommittee to Review Regulations.

MS. VILARDO:

I do not read it that way. Page 5, line 38, section 12 says "A regulation adopted by" That to me means after. You have created more bureaucratic hoops when you are going to legislative oversight.

CHAIR LESLIE:

The point was we needed more subject matter review and people with more expertise. We will see if we can make it clearer.

MS. VILARDO:

The people appointed will not have the subject matter in all of these areas.

MR. CROWLEY:

We are neutral on the bill until we learn the intent of the bill. Dr. Glenn Miller played a key role in the reclamation law adopted in Nevada, which is used as a standard around the world. The regulators in the State are some of the best in the world. We will work with you as you scrutinize the regulation of mining.

CHAIR LESLIE:

We will open it up to public comment.

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JAMES RICHARDSON (Nevada Faculty Alliance):
We are in support of S.J.R. 15 and the need for more oversight in the environmental area.

CHAIR LESLIE:
We will close the hearing on S.B. 493. Any other public comment?

MS. VILARDO:
I have an issue with S.B. 386. I oppose the section that earmarks any revenue.

CHAIR LESLIE:
The meeting is adjourned at 3:32 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. 386	C	Tom McCoy	Testimony for NV Tobacco Tax Bill SB 386
S.B. 386	D	Beverly J. May	Testimony
S.B. 386	E	Jennifer M. Hadayia	Washoe County Health District
S.B. 386	F	Christopher Roller	Testimony in Support of S.B. 386
S.B. 386	G	Christopher Roller	State Cigarette Excise Tax Rates & Rankings
S.B. 386	H	Amy Beaulieu	Testimony for SB 386
S.B. 386	I	Michelle Gorelow	Testimony on Behalf of the March of Dimes
S.B. 386	J	Southern Nevada Health District	Written Testimony
S.B. 386	K	Nevada Cancer Institute	Written Testimony
S.B. 386	L	Fairbank, Maslin, Maullin, Metz & Associates	Written Testimony
S.J.R. 15	M	Guy Louis Rocha	Testimony
S.J.R. 15	N	Guy Louis Rocha	Social Change in Early Nevada

S.J.R. 15	O	Jim Hulse	Testimony on S.J.R. 15 of the 2011 Session
S.J.R. 15	P	Hugh Jackson	Testimony
S.J.R. 15 and S.B. 493	Q	John Hadder	Statement of Great Basin Resource Watch