

**MINUTES OF THE JOINT MEETING OF THE  
SENATE COMMITTEE ON FINANCE  
AND THE ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Seventh Session  
May 30, 2013**

The joint meeting of the Senate Committee on Finance and the Assembly Committee on Ways and Means was called to order by Chair Debbie Smith at 7:14 a.m. on Thursday, May 30, 2013, in Room 4100 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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.

**SENATE COMMITTEE MEMBERS PRESENT:**

Senator Debbie Smith, Chair  
Senator Joyce Woodhouse, Vice Chair  
Senator Moises (Mo) Denis  
Senator David R. Parks  
Senator Pete Goicoechea  
Senator Ben Kieckhefer  
Senator Michael Roberson

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblywoman Maggie Carlton, Chair  
Assemblyman William C. Horne, Vice Chair  
Assemblyman Paul Aizley  
Assemblyman D. Paul Anderson  
Assemblyman David P. Bobzien  
Assemblyman Andy Eisen  
Assemblywoman Lucy Flores  
Assemblyman Tom Grady  
Assemblyman John Hambrick  
Assemblyman Crescent Hardy  
Assemblyman Pat Hickey  
Assemblyman Joseph M. Hogan  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Randy Kirner  
Assemblyman Michael Sprinkle

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 2

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

**STAFF MEMBERS PRESENT:**

Mark Krmpotic, Senate Fiscal Analyst  
Russell J. Guindon, Principal Deputy Fiscal Analyst  
Alex Haartz, Principal Deputy Fiscal Analyst  
Kevin C. Powers, Chief Litigation Counsel  
Cynthia Clampitt, Committee Secretary

**OTHERS PRESENT:**

Michael N. Rebaleati, Eureka County Recorder/Auditor  
Chris Nielsen, Executive Director, Department of Taxation  
Terry Rubald, Chief, Local Government Services Section, Department of Taxation  
Naomi Duerr, PG, President, Desert Pacific Exploration, Inc.  
Robert Fulkerson, Progressive Leadership Alliance of Nevada  
Joshua Wilson, Assessor, Washoe County  
Michael A. Mears, Assessor, Eureka County  
Lesley Pittman, Nevada Mineral Exploration Coalition

**Chair Smith:**

We will now open the hearing on Senate Bill (S.B.) 400.

**SENATE BILL 400 (1st Reprint)**: Revises provisions governing the taxation of mines and mining claims and provides for the taxation of certain items relating to mines, mining claims and extracted minerals. (BDR 32-620)

**Kevin C. Powers (Chief Litigation Counsel, Legal Division):**

The Legal Division of the Legislative Counsel Bureau, is a nonpartisan bill-drafting agency. I am present today to provide the Joint Committee with counsel and advice regarding the legal effect and consequences of legislation.

I have provided Proposed Amendment 8751 to Senate Bill No. 400, First Reprint ([Exhibit C](#)). The proposed amendment is a complementary piece of legislation to S.J.R. 15 of the 76th Session.

**SENATE JOINT RESOLUTION 15 OF THE 76TH SESSION:** 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)

The bill was passed in the 2011 Legislation Session and was passed again in compliance with the *Constitution of the State of Nevada* during the current Legislative Session. It will be placed on the statewide ballot on November 4, 2014. That legislation proposes to repeal certain provisions of the Nevada Constitution governing the taxation of mines, mining claims and minerals. If approved by the voters in 2014, those provisions will be removed from the Nevada Constitution and the legislative powers would be restored to impose taxes on mines, mining claims and minerals through public policy, as it determines necessary.

The proposed amendment to S.B. 400 is extensive, but can be broken into four primary categories: real property taxes, personal property taxes, excise taxes and royalties on mineral extraction and conforming changes to all related statutes.

Real property taxes involve mines and mining claims. Mines consist of the land or real property. A mining claim is a possessory interest in real property. Four sections of [Exhibit C](#) address real property taxes.

The first is section 2.7 on page 13 of [Exhibit C](#). The Legislature may exempt from real property taxes, property that is used in the conservation of energy, to promote the substitution of alternative sources of energy, or fossil sources of energy, under Article 10, section 1, subsection 8 of the Nevada Constitution. Section 2.7 of the bill provides that all real property in a mining operation for geothermal resources is exempt from real property taxes. Currently, the real property of a mining operation using geothermal resources is exempt from real property taxes. The provisions of section 2.7 of [Exhibit C](#) will ensure that the exemption continues with the passage of S.B. 400, if S.J.R. 15 of the 76th Session becomes effective.

The next provision is found in section 3.5, on page 13 of [Exhibit C](#). It would amend *Nevada Revised Statutes* (NRS) 361.157. If real property is exempt from property tax for any reason, and is then used under a lease or other arrangement for mining or mining claims, the real property retains its exemption.

Section 4, on page 15 of [Exhibit C](#), also addresses real property. Under Article 10, section 1, subsection 1 of the Nevada Constitution, the Legislature has the duty to establish regulations that secure a just evaluation of property to use in determination of the property tax assessment. Section 4 of [Exhibit C](#) amends NRS 361.227, to provide that in assessing the taxable value of any real property, the mineral deposits attached to the land are not included in the value of that property. Therefore, mineral deposits will only be taxed once they are extracted from the land. That provision will ensure mining claims will not be taxed based on their mineral value until productive mining of the land occurs.

Finally, section 48, on page 47 of [Exhibit C](#), is the repealer clause. This portion of [Exhibit C](#) removes the proposed repeal of the existing statutory provisions that exempt unpatented and patented mining claims from the real property tax. The 1st reprint of S.B. 400 proposes to repeal those sections. [Exhibit C](#) will eliminate that repeal, thereby preserving the statutory exemptions for unpatented and patented mining claims as an exemption from real property tax.

**Senator Goicoechea:**

Does section 4 of [Exhibit C](#) prohibit the consideration of the mineral values in assessment of real property? It removes the *ad valorem* component for local government. However, it sounds like local government could apply an *ad valorem* tax rate to those lands at their face value under fourth-class grazing land. Is that correct?

**Mr. Powers:**

The purpose of the real property provisions I presented is a four-prong approach to ensure that property that is currently exempt from real property tax would continue to be exempt from real property tax if S.J.R. 15 of the 76th Session becomes effective.

However, once S.J.R. 15 of the 76th Session becomes effective, some parcels may be subject to a real property tax. When assessing such properties, the tax assessment will be precluded from consideration of the mineral value of the property.

**Senator Goicoechea:**

I concur. As we move forward, is there a method to capture the value of the minerals or the deposit under *ad valorem* computations? I do not see where the *ad valorem* tax base is maintained.

**Mr. Powers:**

That provision is in section 25, page 31 of [Exhibit C](#). It is located in NRS 362.170 to preserve the existing distribution of revenue to local governments. What they are receiving under the Net Proceeds of Minerals (NPOM) tax, they will continue to receive under the excise tax for mineral extraction.

The second category of [Exhibit C](#) is personal property taxes. It is addressed in section 2.5, on page 12 of [Exhibit C](#). Under Article 10, section 1, subsection 6 of the Nevada Constitution, the Legislature has the power to exempt personal property from property tax. It is well established in Nevada law, that NPOM tax proceeds and gross yield from mining operations comprised of the actual minerals extracted are personal property. When the minerals are a part of the land, they are considered real property. When they are severed or extracted from the land, they become personal property.

Section 2.5 of [Exhibit C](#) provides that the gross yield and NPOM tax from mineral extraction and the mineral royalties paid from mineral extraction, are exempt from personal property tax if they are subject to the excise tax upon mineral extraction. If the extraction operation is paying the excise tax on mineral extraction, they will not be assessed personal property tax for the same mineral extraction.

The third category of [Exhibit C](#) is the excise tax upon mineral extraction. Those taxes are addressed in sections 10 through 32 of [Exhibit C](#). These provisions amend NRS Chapter 362. Chapter 362 of NRS imposes the NPOM tax on extracted minerals. Senate Bill 400 clarifies that the NPOM tax will become an excise tax on mineral extraction, not an *ad valorem* tax on real property. It is an excise tax for the privilege of extracting the minerals, not on the value of the minerals extracted.

Sections 10 and 12 of [Exhibit C](#) add a statement of legislative intent and amend NRS 362.100 to explicitly convey the Legislature's intent that the bill is imposing an excise tax, not an *ad valorem* or property tax.

Section 21 of [Exhibit C](#) amends NRS 362.135 to clarify that any person who challenges or appeals the imposition of the excise tax, must pay the tax under protest while the challenge or appeal is pending. Therefore, any operation that would challenge the constitutionality or validity of the excise tax must pay the tax under protest, and continue to pay until a final resolution of that challenge or appeal.

Section 22 of [Exhibit C](#) amends NRS 362.140, which is the current tax rate structure for the NPOM tax. [Exhibit C](#) sets the current tax rates for the NPOM tax and applies those current tax rates under the excise tax provisions. The amount each mining operation is currently paying under the NPOM tax will continue to be paid under S.B. 400 for the excise tax rate upon mineral extraction and royalties.

Section 25 of [Exhibit C](#) provides that in NRS 362.170 a certain portion of all revenue taken from the extraction tax will be directed to the local governments. The percentage directed to local governments is determined by considering the entire taxation receipts in that county and applying the local tax *ad valorem* rate to those proceeds. That net amount is what is directed to the local governments. It is not applying an *ad valorem* tax. It is simply using the tax rate to determine how much of the revenue from excise tax is directed to local governments.

For example, if a county had an excise tax rate of 3 percent, that percentage would be applied to the NPOM through the excise tax requirements and be directed to the local governments.

Section 25 of [Exhibit C](#) ensures that local governments will continue to receive the same amount of revenue they currently receive under the NPOM tax. It would now be addressed through excise tax on mineral extraction.

Many references in S.B. 400 are made to the excise tax upon mineral extraction. [Exhibit C](#) ensures that all existing statutes of NRS, any time there is a reference to the NPOM tax, is changed to the excise tax upon mineral extraction and royalties.

Section 50 of [Exhibit C](#) establishes the effective date of S.B. 400. The bill only becomes effective if the voters approve S.J.R. 15 of the 76th Session in November 2014. If the voters approve that bill, S.J.R. 15 of the 76th Session will become effective upon the canvas of the votes, which is the fourth Tuesday of

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 7

November, or November 25, 2014. Senate Bill 400 would also become effective on November 25, 2014.

Because of the many changes specified in Proposed Amendment 8751 to S.B. 400, this bill does not generate or increase any revenue, so adoption of the proposed amendment would remove the current requirement for a two-thirds affirmative vote for passage.

**Assemblyman Grady:**

Will S.B. 400 affect the prepayment of taxes currently being made by the mining industry?

**Mr. Powers:**

This bill is structured to change no provisions that include the prepayment provisions. If the 2013 Legislature decides to extend the prepayment provisions, this bill will accommodate that decision. Currently, the prepayments are set to expire by limitation on June 30.

Another bill is pending to extend the prepayment provisions to June 30, 2015. That legislation would not conflict with S.B. 400.

**Senator Goicoechea:**

I look forward to further testimony on S.B. 400.

**Michael N. Rebaleati (Eureka County Recorder/Auditor):**

Eureka County lives and breathes with the NPOM tax revenues. We have concerns with S.B. 400. However, we are neutral at this time. Has the Legislature considered an interim study over the next 2 years to address the complexity of this change?

**Chair Smith:**

Are you requesting an interim study to be added to the bill?

**Mr. Rebaleati:**

I am asking if the Legislature has considered the possibility of an interim study, or if one could be considered. It might help with understanding the complexities.

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 8

**Chair Smith:**

Time can be arranged with our Legal Division Staff to work with interested parties to further discuss the provisions of S.B. 400 while you are in Carson City.

We support concerns expressed by local governments. Our Legal and Fiscal Staff have endeavored to accommodate those concerns as well.

**Mr. Powers:**

I am available after this hearing to meet with Mr. Rebaleati and anyone else who may wish to participate.

**Chris Nielsen (Executive Director, Department of Taxation):**

Terry Rubald, Chief, Local Government Services Section is with me today. We are still digesting the proposed provisions of [Exhibit C](#). We have some questions and concerns from a technical standpoint. I would like to work with Legal and Fiscal Staff in addressing those concerns.

**Chair Smith:**

Of course; however, further discussions need to be addressed expeditiously.

**Terry Rubald (Chief, Local Government Services Section, Department of Taxation):**

We have not yet thoroughly digested the provisions of S.B. 400. One change I noticed was in the appeal process, where the appeals would be addressed by the Nevada Tax Commission. In NRS 361.405, however, it appears the State will still be required to notify the counties of those changes.

**Mr. Powers:**

Senate Bill 400 provides that challenges to the new excise tax formula for extraction will be addressed through the Nevada Tax Commission instead of the State Board of Equalization. If the Department of Taxation feels there are other provisions in NRS 361 that need to be changed to conform to that language, they can be addressed when the actual amendment is drafted.

**Senator Roberson:**

Senate Bill 400 is very similar to S.B. 513 regarding characterization of these provisions as an excise tax.



Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 9

**SENATE BILL 513**: Proposes the Education Priority Act as the Legislature's competing ballot measure to Initiative Petition No. 1. (BDR 32-1221)

Please highlight the major differences, if any, between this bill and S.B. 513 with regard to the tax structure.

**Mr. Powers:**

Some of the provisions of S.B. 400 are similar to those in S.B. 513. The major difference is that S.B. 400 addresses the real property tax issue; whereas S.B. 513 proposes only the alternative measures dealing with the personal property tax and excise tax requirements.

Senate Bill 400 contains a real property tax exemption for geothermal operations not included in S.B. 513. It specifies the value of minerals not be included in the valuation of the land. That provision is not a part of S.B. 513. All the remaining provisions regarding personal property and excise taxes are similar, if not the same, in both measures.

**Senator Roberson:**

Were the geothermal and unpatented mining claim provisions a part of S.B. 401 that was proposed earlier in this Legislative Session?

**SENATE BILL 401**: Revises provisions governing the taxation of mines and mining claims and excludes the value of certain mineral deposits from the taxable value of property. (BDR 32-910)

I am trying to determine if there is anything different between a combination of S.B. 401 and S.B. 513, both of which have already been proposed.

**Mr. Powers:**

Senate Bill 400 contains portions of S.B. 401 and S.B. 513 as well as parts that were not included in either bill that are addressed in Proposed Amendment No. 8751 to S.B. 400.

**Senator Roberson:**

Can you identify the provisions that were not in S.B. 401 or in S.B. 513?

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 10

**Mr. Powers:**

With the Chair's indulgence, I prefer to have that discussion when I have examined all three pieces of legislation and will talk with Senator Roberson after this hearing.

**Chair Smith:**

That is acceptable.

**Senator Goicoechea:**

This bill still concerns extraction and extraction costs when determining what amount is taxable. How is that different from what is currently being done?

**Ms. Rubald:**

The principle concepts of getting to a taxable value would be very similar. It would begin with the gross yield, allowing deductions, and arriving at a taxable amount.

**Senator Goicoechea:**

That has been a discussion over the last 15 years. What are and are not allowable deductions when considering extraction costs? When this is enacted, will it be clear exactly which deductions from the NPOM tax are allowable? Can the allowable deductions be changed by a simple change in statutes?

**Ms. Rubald:**

I will need to study the bill more closely to determine which deductions would be allowed.

**Mr. Powers:**

Under the current constitutional provisions, the imposition of a net proceeds tax is required, but it does not specify which deductions are or are not allowed. Those decisions, under current law, are provided by the statutes. The Legislature can, and has, adjusted those deductions.

Under S.B. 400, the statutory provision would remain the same. Therefore, whatever deductions are allowed now for a mining operation will still exist under S.B. 400, if S.J.R. 15 of the 76th Session becomes effective.

**Senator Goicoechea:**

I wanted to get that on the record.

**Senator Kieckhefer:**

Is that also true for Department of Taxation's audit investigative powers?

**Mr. Powers:**

That is correct. With some minor modifications, S.B. 400 retains all the procedural and methodology mechanisms that are currently specified in NRS 362. The auditing power would remain the same. The mining operations would continue to be required to file their yearly statements, as they do currently. The Department of Taxation would investigate the gross yield and the deductions allowed by statute. The net proceeds and the same tax rates that exist now would be applied to net proceeds under the new excise tax for mineral extraction.

**Naomi Duerr, PG (President, Desert Pacific Exploration, Inc.):**

I appreciate the concern by members of the Senate committee that previously heard S.B. 400 and took into consideration our testimony on the bill as it had been previously drafted regarding the potential impacts on the exploration industry. We found the original bill to be deleterious to the exploration industry. Exploration is primarily a research and development effort.

The legislative focus has been to tax primarily the proceeds of mines. If we do not explore, no new mines will be created in our communities. Desert Pacific Exploration explores for mineral deposits in eight states. We do not explore in states that have deleterious taxation policies, including California, Oregon and Colorado. Our efforts are focused on areas in which we can succeed.

If S.B. 400 is passed, the sections concerning mining claims will enable us to continue to locate new sources of revenue for the State.

A number of sections in S.B. 400 concern royalties. Our company has brought considerable amounts of capital to Nevada. We have spent our own funds for exploration with very little return. Once a mine begins processing the minerals, the exploration company would receive a royalty. Unlike mining proceeds that are authorized for a few deductions, there are no deductions for royalties. There is no recognition in legislation of the money spent on exploration to get to a productive mining operation. We would like to participate in future discussions, perhaps not a part of S.B. 400, regarding possible royalty tax deductions.

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 12

**Chair Smith:**

Are there currently no tax deductions for royalties?

**Mr. Powers:**

There are no tax deductions for royalties under existing law. Royalties are taxable at a 5 percent tax rate.

**Senator Goicoechea:**

Would royalties depend on the type of agreement a company had with mine owners? Would it be paid on the net or gross amount? Saying there are no deductions for royalties is not entirely true as it depends on what the contracts specify.

**Mr. Powers:**

That is correct. Under statute, the company pays a 5 percent tax rate on whatever royalty is paid to the recipient, by the extractive operation. However, the recipient of royalties could enter into a contractual relationship with the payer of the royalties to determine how the royalty is calculated.

**Robert Fulkerson (Progressive Leadership Alliance of Nevada):**

This is an incredibly complicated subject and the Progressive Leadership Alliance of Nevada (PLAN) appreciates the efforts being made to combine the best provisions of the various bills, including the one proposed by Senator Roberson, into one bill.

The members of PLAN also deeply appreciate the passage of S.J.R. 15 of the 76th Session in this Session, making all of this possible.

**Senator Goicoechea:**

I would like to hear testimony from one or more of the county assessors present on how this legislation will affect assessment for local governments.

**Joshua Wilson (Assessor, Washoe County):**

Washoe County is not as reliant on mining taxation as some of the smaller counties within the State. Based on the testimony I heard from Mr. Powers, it seems that S.B. 400 is attempting to maintain the status quo with the assumption that S.J.R. 15 of the 76th Session passes a vote of the people. Under that context, I see no immediate concerns with what is proposed. I have not yet had an opportunity to review thoroughly the provisions of the proposed amendment.

**Michael A. Mears (Assessor, Eureka County):**

Some of our earlier concerns related to the value of minerals in the ground and unpatented claims have been resolved in Proposed Amendment 8751 to S.B. 400.

The valuation of mines is the responsibility of the Department of Taxation. My primary responsibility in terms of mining valuation, as the Assessor in a county dependent on mining, is the value of the land itself, with no consideration of mineral content or potential mining value. It is simply valued as vacant land.

I see no immediate effect on my county, or how we value mining properties under the proposals in S.B. 400.

**Senator Goicoechea:**

According to testimony, mineral values have been taken out of the equation. Those include surface areas, patented mining claims or private property that has mineral value underground. Technically, the function of the assessors is to value the real property under this scenario. Do you see a scenario in which you would be imposing a small tax rate on those surface areas whether they are patented mining claims or private property considered as mining claims?

**Mr. Mears:**

That is currently being done. We value land that is being mined or potentially held for future mining. We have locations where there are ore dumps. They are still assessed a land value and are subject to the local county tax rate for those lands.

Patented mining claims on federal land also receive a local assessment. Nothing in S.B. 400 appears to change those valuations.

**Lesley Pittman (Nevada Mineral Exploration Coalition):**

I want to thank all those, during this Legislative Session, who have worked to leave the Exploration Coalition harmless as S.J.R. 15 of the 76th Session was processed. The proposed version of S.B. 400 is a much-improved version. I also appreciate the efforts made by Senator Roberson in sponsoring S.B. 401. We request your full support for passage of S.B. 400 with the proposed amendment.

**Chair Smith:**

The plan is not to hold another Full Joint Committee hearing unless there is another major concern to be brought forward. Our goal would be that the Senate consider

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 14

the proposed amendment and move S.B. 400 to the Assembly where it can hopefully be considered in a Work Session.

By the end of this day, any further suggestions or revisions should be provided to either Assemblywoman Carlton or me and we will get them to our Legal and Fiscal Staff so that the bill can begin to move forward.

Senate Committee on Finance  
Assembly Committee on Ways and Means  
May 30, 2013  
Page 15

Seeing no further business before the Joint Committee, this meeting is adjourned at  
7:57 a.m.

RESPECTFULLY SUBMITTED:

---

Cynthia Clampitt,  
Committee Secretary

APPROVED BY:

---

Senator Debbie Smith, Chair

DATE: \_\_\_\_\_

---

Assemblywoman Maggie Carlton, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	1		Attendance Roster
S.B. 400	C	49	Kevin Powers	Proposed Amendment 8751