

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Seventy-Seventh Session
March 26, 2013**

The Senate Committee on Revenue and Economic Development was called to order by Chair Ruben J. Kihuen at 1:07 p.m. on Tuesday, March 26, 2013, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Room 118 of the Technical Arts Building, Great Basin College, Elko, 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 Ruben J. Kihuen, Chair
Senator David R. Parks, Vice Chair
Senator Moises (Mo) Denis
Senator Debbie Smith
Senator Ben Kieckhefer
Senator Michael Roberson
Senator Greg Brower

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senatorial District No. 11
Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley-Gonzalez, Counsel
Kevin C. Powers, Chief Litigation Counsel
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Alan H. Glover, Clerk-Recorder, Carson City
Karen Ellison, Recorder, Douglas County
Larry Burtness, Recorder, Washoe County
Eugene Mendiola, Assistant Recorder, Recorder's Office, Clark County
Michael D. Hillerby, Propel Financial Services
Lisa Hough, Propel Financial Services
Mary Belan Doggett, Propel Financial Services
Al Kramer, Treasurer, Carson City
Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada
Joe McCarthy, Comstock Residents Association
Tim Crowley, President, Nevada Mining Association
James Wadhams, Nevada Mining Association
Marla Turner
Al Martinez, President, Service Employees International Union Nevada, Local 1107; Chair, We Are Nevada
Erik Schoen, Executive Director, Human Services Network
Brian Fadie, Executive Director, ProgressNow Nevada
Jana Diamond-Pleggenkuhle
Craig M. Stevens, Nevada State Education Association
Cecilia G. Colling, Nevada Women's Lobby
Keith Uriarte, American Federation of State, County and Municipal Employees, AFL-CIO Local 4041
Astrid Silva
Randy Pease, CRA of America, LLC
Sebring Frehner
Robert Kern
Kelly Charles

Chair Kihuen:

I will open the hearing with Senate Bill (S.B.) 238.

SENATE BILL 238: Makes various changes relating to taxation. (BDR 32-973)

Senator Ben Kieckhefer (Senatorial District No. 16):

This legislation deals with the appeals process for an individual or business wrongly dealt with in a real property transfer transaction where the tax is allocated based on that transaction.

Alan H. Glover (Clerk-Recorder, Carson City):

I have prepared testimony ([Exhibit C](#)).

Chair Kihuen:

I will take anyone in support of S.B. 238.

Karen Ellison (Recorder, Douglas County):

We support S.B. 238.

Larry Burtness (Recorder, Washoe County):

We support S.B. 238.

Eugene Mendiola (Assistant Recorder, Recorder's Office, Clark County):

We support S.B. 238.

Chair Kihuen:

I will close the hearing on S.B. 238 and open the hearing on Senate Bill 301.

SENATE BILL 301: Provides for assignment of property tax liens. (BDR 32-969)

Senator Debbie Smith (Senatorial District No. 13):

I have prepared testimony on S.B. 301 ([Exhibit D](#)). We had many unintended issues which the amendment addresses. These issues were discovered after reviewing S.B. 301 with the county treasurers. If there are additional technical issues, we can correct them. These changes will allow the transfers to take place by eliminating the provision which allows the tax certificate to be sold without the owner knowing.

Michael D. Hillerby (Propel Financial Services):

The proposed amendment ([Exhibit E](#)) to S.B. 301 would provide options for property owners and local governments. We have two representatives from Propel Financial Services who will explain how property tax liens work.

Lisa D. Hough (Propel Financial Services):

Senate Bill 301 will be a consumer-friendly option and benefit local governments. Tax lien transfers (TLT), also known as assignments, help property owners avoid foreclosure, resolve outstanding property tax obligations and get back on financial footing ([Exhibit F](#)). Consumers may be unable to pay their property tax bills because of unforeseen changes in their lives. Under the current system, consumers do not have many options. Sometimes an agreement may be worked out with the county treasurer, which may be available in limited circumstances and have a short repayment period. Homeowners have the option of putting their tax obligation on credit cards or secure bank loans, but bank loan modifications cause the monthly mortgage payment to increase substantially.

In our opinion, TLTs are a more flexible option and can be designed to meet the financial situation of each property owner. Property owners can choose between different tax property lenders for the best fees, terms and interest rates. Tax lien transfers allow property owners to achieve financial responsibility in repaying their obligations. Most property owners who use TLTs repay them within 3 years and stay in their homes. When the property owner authorizes the assignment of the lien and works out the terms, the transferee immediately pays the county the full amount of taxes, interest and fees due.

Mary Belan Doggett (Propel Financial Services):

The three areas of the proposed amendment, [Exhibit E](#), that I will cover include simplifying the duties of the treasurers, providing additional consumer protection and clarifying the bond requirements for TLT companies. First, the amendment provides that once the lien is transferred, the treasurer is relieved of the burden to service the lien. Secondly, the amendment simplifies the information the treasurers have to keep on the assignment. Third, tax lien companies must post and maintain a \$500,000 bond. This will ensure that transferees are aware of obligations they are undertaking before they become involved at the individual transaction level. Preexisting lienholders and certain family members would be exceptions.

We would also support additional amendments that limit taxing transfers to only delinquent taxes and prohibit a transferee from foreclosing any sooner than the county could foreclose. In addition, a property owner would be able to pay off an assigned lien at any time without penalty. We would support an amendment

that would allow another party to pay off an assigned lien if the owner no longer pays the lien and is in default.

Chair Kihuen:

Are there any questions?

Senator Smith:

This bill would also apply to commercial property.

Chair Kihuen:

Are there any supporters, opponents or those neutral who would like to testify?

Al Kramer (Treasurer, Carson City):

There is not an advantage to the treasurers as far as cash flow. We collect every dime of taxes owed on property taxes. During the first year, we collect 97 percent to 98 percent of the taxes due and 50 percent of the balance is collected within 6 months at the beginning of the next fiscal year. The balance is protected by bankruptcy and may ride out for 3 years. We collect 10 percent interest on delinquencies. We are bound by statute and unable to extend more time on the delinquencies, but Propel would give the homeowner more time to pay off the taxes. This program would benefit commercial property owners as well.

Chair Kihuen:

For the record, are you neutral on S.B. 301 with the amendment?

Mr. Kramer:

Yes.

Chair Kihuen:

I will close the hearing on S.B. 301 and open the hearing on Senate Joint Resolution 15 (S.J.R.) 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)

Kevin C. Powers (Chief Litigation Counsel):

We are a nonpartisan staff, and we do not support or oppose any legislation. We provide the Legislature with legal advice and counsel regarding the legal effect and consequences of legislation. I will cover an overview of S.J.R. 15 of the 76th Session ([Exhibit G](#)), a proposed constitutional amendment under Article 16, section 1 of the Nevada Constitution. This proposed constitutional amendment passed the 76th Session and needs to pass during the 77th Session; if that occurs, it will go on the ballot for the 2014 general election. If the voters ratify S.J.R. 15 of the 76th Session, it will become part of the Nevada Constitution.

Two changes will occur with the passage of S.J.R. 15 of the 76th Session. Article 10, section 1 of the Nevada Constitution establishes a property tax in Nevada. There is an exception in Article 10, section 1, subsection 1 that provides mines and mining claims be exempt from the property tax and shall be assessed only as provided in Article 10, section 5. The resolution does two things. It would remove the exception; therefore, mines and mining claims would be subject to the property tax if there were no other exception in the Constitution.

It would also repeal Article 10, section 5 that governs taxation on mines and mining claims in the Constitution. Currently, it provides that the Net Proceeds of Minerals Tax (NPOMT) must not exceed 5 percent, and it provides that no other tax may be levied on minerals until the identity of the mineral is lost. Article 10, section 5 also provides for exception from taxation for unpatented and patented mines and mining claims. Those claims are currently exempted. With the repeal of the exception, in Article 10, section 1, subsection 1 and Article 10, section 5, the control of the taxation on mines, mining claims and minerals would be governed by the laws the Legislature determines appropriate.

Senator Brower:

I have read the minutes from the 76th Session. Legislative Counsel Brenda Erdoes testified in this Committee on the resolution. Given the statement, "If this were passed this Session, nothing would change in terms of how taxes are paid by the mining industry," Ms. Erdoes answered, "That is correct." Do you agree with her statement?

Mr. Powers:

I do agree.

Senator Brower:

The next question was, "If this were passed the second time in 2013, nothing would change?" Ms. Erdoes responded, "That is correct." Do you agree with her statement?

Mr. Powers:

I would agree.

Senator Brower:

Finally, she was asked, "If approved by the voters, nothing would change unless the Legislature changed the way mining was taxed." Ms. Erdoes responded, "That is correct. *Nevada Revised Statutes* (NRS) 362 is the statute that implements the provision when changed by the Legislature." Do you agree with her statement?

Mr. Powers:

I would agree. For the record, I need to provide elaboration on legal counsel's opinion about how S.J.R. 15 of the 76th Session will affect existing statutory provisions governing the taxation of mines. The legal issue is whether the repeal of the constitutional provisions will also repeal by implication the statutory provision governing the taxation of NPOMT. Our opinion is because there is another source of constitutional authority to support the NPOMT, Article 10, section 1, subsection 6, the resolution would repeal it in the Constitution and not in the existing statutory provisions.

Chair Kihuen:

Any questions? We will start with the proponents.

Michael Ginsburg (Southern Nevada Director, Progressive Leadership Alliance of Nevada):

A provision that does not allow the Legislature or the people of the State to decide how the mining industry is taxed has no place in the Nevada Constitution. Senate Joint Resolution 15 of the 76th Session is not about taxes, it is about allowing the people of Nevada the ability to determine whether the mining industry will remain in the State Constitution with these protections. Over the last 4 years, fewer than 30 mines in the United States have produced over 99 percent of the gold. Each year of the 4 years, 75 percent of these mines were located in Nevada. Finding precious metals is getting to be more difficult because all of the surface gold has been mined away and sold. With the

quality and quantity of gold in Nevada, our grade remains one of the highest in the world. The World Gold Council and the International Monetary Fund will tell you that Nevada has high quality minerals.

Mining taxes and regulations in the United States and Nevada are taxed at an effective rate of around 1 percent. The mining industry has said with the record high price of gold, it should not be taxed because of the possibility of the price going down. When the economy is stronger and tourism and gaming are doing well, those industries will take care of the taxes—mining will not pay as much. Conversely, when the economy is doing poorly, with tourism and gaming suffering—mining will pay more if the price of gold goes up. Historically, that is not the case. Mining has paid more, but not significantly more, contributing around \$100 million to the State's General Fund. Because of the provision in the State's Constitution, the State has lost revenue during the record price of gold over the last few years.

Nevada has some of the highest quality mines in the industry. The Barrick Cortez mine is ranked as the largest low-cost mine in the world. The idea of Barrick leaving the State is not true. In Alaska, the mineral severance tax-sometimes as high as 50 percent—has produced billions in tax revenue from the minerals industry to fund the state. The citizens of Alaska receive checks from the excess. Alaska has produced 40 million ounces of gold in their state's history, whereas Nevada has produced more than that in the last 8 years.

In 2005, the mining industry pumped out a little less than 100 million gallons of water from the aquifers in northern Nevada every day. This is more water than the Southern Nevada Water Authority sought to pump out of the Great Basin with its initial pipeline plan. The Environmental Protection Agency and the Bureau of Land Management estimate it will take 200 years to repair damage to the land and water aquifers.

Joe McCarthy (Comstock Residents Association):

I have prepared testimony in favor of the bill ([Exhibit H](#)).

Chair Kihuen:

Any questions? I would like to invite the Nevada Mining Association to testify.

Tim Crowley (President, Nevada Mining Association):

Nevada's mining industry maintains its concern stated during the 76th Session

that the passage of S.J.R. 15 of the 76th Session may cause significantly less revenue for State and local governments. It creates instability within the mining industry and will upset a system that has provided disproportionately large tax contributions. To the allegation that mining does not pay its fair share, mining pays four times that of an average Nevada business. Tax contributions of the mining industry represent two times our economic footprint. We represent 4.4 percent of the economy and contribute 8.3 percent to the General Fund. To refute the allegation that Nevada is the most tax-friendly State toward mining companies: a mine in Nevada has higher tax overhead than a similarly sized mine in New Mexico, Arizona, Alaska, Wyoming or Idaho. Colorado, California, Montana and Utah have greater tax burdens, but the difference is negligible.

The statement that mining is the only industry mentioned in the Constitution is not true. While mining is singled out to pay more, some industries such as warehousing and securities, are exempted from some taxes in the Constitution. As for the belief the Constitution protects mining from taxation, it does not protect the industry but calls for a guaranteed stream of revenue above and beyond the taxes imposed on all industries including mining. Those taxes are sales and use, property and payroll. If a new general tax is imposed this Session, the Constitution would not protect mining, and we would participate with all businesses.

In 1989, the Legislature and the voters agreed to raise mining taxes. Passage of S.J.R. 15 of the 76th Session would repeal that tax increase. In 1989, the Legislature and voters agreed on an amendment that would provide a 300 percent increase in mining taxes, which would be deleted by passage of this resolution.

Mining is paying twice what it would if it were manufacturing consumer goods as opposed to extracting raw materials. In 2011, mining paid \$170 million in other taxes, and the NPOMT required mining to pay an additional \$250 million. Passage of S.J.R. 15 of the 76th Session puts the \$250 million in question and puts in question mining participation beyond sales and use, property and payroll taxes. Mining maintains undoing the current structure may cause less revenue, more instability and upset a system that is providing disproportionately large contributions from the mining industry.

Chair Kihuen:

Any questions, Committee?

Senator Roberson:

I am confused. Are you here as neutral, or are you opposed to this provision?

Mr. Crowley:

Our position on S.J.R. 15 of the 76th Session is we believe it is a mistake. The suggestion is if you say it is a tax decrease on your industry, then you should support it. We cannot support it because we maintain it is a tax decrease in the counties in which we live. It is a decrease in the State in which we support essential services. Some have suggested we should oppose this measure because of the hardship that it would create to local governments. We maintain it is a mistake.

Senator Roberson:

I did not receive an answer—are you neutral or opposed?

Mr. Crowley:

I am sticking with my answer.

Senator Roberson:

That is not an answer. Are you neutral or opposed?

Mr. Crowley:

We have been neutral in a sense that if people want to pin us down on a position for the bill, we think it is a mistake.

Senator Roberson:

We all take positions every day, and I am asking you for a simple position. Are you neutral or opposed?

Mr. Crowley:

We think it is a mistake.

Senator Brower:

We understand where you are coming from. It appears in 2011 that the Mining Association was neutral on S.J.R. 15 of the 76th Session. Is that correct?

Mr. Crowley:

Yes.

Senator Brower:

I do not see anywhere in the record where the Association described S.J.R. 15 of the 76th Session as a mistake. So you are somewhere between neutral and a mistake?

Mr. Crowley:

We maintained this could result in a decrease in revenue to local governments and the State.

Senator Brower:

It is an interesting point. We have discussed it, debated it, and legal counsel tells us it is not the case.

Senator Roberson:

We will assume for argument's sake that your legal position is correct and your concern is that the taxpayer will not receive as much revenue. Does that mean you are prepared to sue the State over this issue?

Mr. Crowley:

I cannot answer for the individual companies within the industry, but there is a system that would not require litigation to decide fair market value of property. It involves the State Board of Equalization, and we would pay the taxes due to us.

Senator Roberson:

Assuming the Board of Equalization determines that you have to continue to pay taxes in the same manner that you have been—will you sue the State over that issue?

Mr. Crowley:

I cannot answer the question. That would be left to the companies in the Association.

Senator Roberson:

Do you have a personal opinion? Would you recommend to your membership in the industry to sue the State?

Mr. Crowley:

No, I would not.

Senator Denis:

You have said it is a mistake because it would reduce revenue to local government. Would you elaborate?

Mr. Crowley:

Our opinion is that if we were to be treated as all property taxpayers, we would revert to a tax situation where the local governments would assess their taxes on a county rate as opposed to the 5 percent constitutional maximum. It is not clear, and our lawyers have not made it clear, whether it is assessed on 100 percent of assessed valuation or 35 percent.

Senator Denis:

Do you think it will have an impact on State government?

Mr. Crowley:

Attorneys are also debating that, and it is not clear. The State component did not change until the Constitution changed in 1989. If that is repealed, there is an interpretation that the State component shall cease.

Senator Denis:

This is all based on your legal opinion?

Mr. Crowley:

Yes.

Senator Brower:

If your legal theory is correct on the impact on tax collection by the counties and the State and S.J.R. 15 of the 76th Session passes, is it not true the Legislature would have the flexibility and the power to adjust and change the way mining is taxed to eliminate the decrease in taxation?

Mr. Crowley:

I would argue that you have the ability today; you have the ability to tax mining with sales taxes and the NPOMT.

Senator Brower:

Without the passage and adoption by the voters, we cannot change the NPOMT.

Mr. Crowley:

The Legislature made changes to the NPOMT during the 76th Session.

Senator Brower:

That was because of the statutory change in the deductions.

Mr. Crowley:

Yes.

Senator Brower:

With respect to the 5 percent cap, without the passage of S.J.R. 15 of the 76th Session and the adoption by the voters, we cannot change the 5 percent.

Mr. Crowley:

It is my understanding that all property taxpayers in the State have the protection of the 5 percent cap on their property taxes.

Senator Brower:

I am trying to be very clear. Without S.J.R. 15 of the 76th Session, the Legislature cannot change the 5 percent cap on NPOMT in the Constitution.

Mr. Crowley:

There will be a 5 percent cap on all property tax with or without S.J.R. 15 of the 76th Session passage.

James Wadhams (Nevada Mining Association):

One of the key pieces is the language we are talking about in S.J.R. 15 of the 76th Session. As Mr. Powers identifies, it repeals the words "except mines and mining claims" out of Article 10, section 1 and repeals section 5 in its entirety. Senate Joint Resolution No. 22 of the 64th Session amended the State's Constitution with the passage of Ballot Question No. 1 from the Special Election held on May 2, 1989 ([Exhibit I](#)). Section 5 is the exact language that appears in Article 10, section 5, [Exhibit I](#), in Ballot Question No. 1. It was passed by the voters, as Mr. Powers indicated, and that language would be repealed with S.J.R. 15 of the 76th Session.

Former Secretary of State Frankie Sue Del Papa, in writing the argument for passage, said, "This proposal would allow the legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes." Senate Joint Resolution 15 of the 76th Session reverses that action. Repealing of an increase creates uncertainty. The mining industry faces a federal bill with economic impact and the teacher's 2 percent margin tax, which will be on the ballot. The mining industry has the uncertainty of the price of minerals and the cost of extraction. In addition, the Legislature has been discussing taxation on mining or minerals, which adds to the uncertainty.

This resolution does create uncertainty for the industry and the State. If the language is repealed, the most stunning element of the repeal puts minerals back into the Constitution. As Mr. Powers pointed out, that provision, Article 10, section 1, in [Exhibit I](#), states, "The legislature shall provide by law for a uniform and equal rate of assessment and taxation ... for taxation of all property, real, personal and possessory." That will be the resulting language constraining decisions this body might make. The constitutional separation between the appropriations of the counties and State will disappear. The question as to whether the State or the counties will benefit or be burdened by the change in the repeal is an issue for local governments that are beneficiaries of the tax distribution.

People say mining is the only industry identified and protected by the Constitution. [Exhibit I](#) shows that stocks, bonds, personal property in warehouses and business inventories are exempt in our Constitution. They also say mining is not paying its fair share because it is protected by the Constitution. The limitations in section 5 and in section 1 are related to the property value, not the profitability, payroll or any other gain from mining's economic activity.

Chair Kihuen:

Do you feel mining is paying its fair share to the State?

Mr. Wadhams:

Yes.

Chair Kihuen:

Why is that?

Mr. Wadhams:

I was here in 1989 when the tax on property value was raised from the same rate that all other businesses pay on their properties to the 5 percent constitutional maximum. We went through the property tax shift in 1981, which lowered the property tax rates. The effective tax rate is approximately 1 percent and mining pays 5 percent.

Chair Kihuen:

What would you say to the people who say other states are paying as much as 30 percent and in Nevada, mining is paying only 5 percent?

Mr. Wadhams:

If you compare the hard rock mining tax rates in our region or across the Country, Nevada falls in the middle.

Chair Kihuen:

You do feel the mining industry has contributed and is paying its fair share in the State?

Mr. Wadhams:

Yes. It is said that mining needs to be taken out of the Constitution, but S.J.R. 15 of the 76th Session does not do that. It puts mining back into the Constitution where in Article 10, section 1 it will be required to be treated like all other property owners. There are documents where the U.S. Supreme Court has interpreted the phrase "uniform and equal," and the U.S. Supreme Court has interpreted the phrase "just valuation." The mineral property will go back into the Constitution, which does not protect mining from the payroll tax, margins tax, net business income tax; it deals with the value of the property. It is also said that mining has a capped rate, which is a reference to section 5 of Article 10. Section 2 of Article 10 states "The total tax levy for all public purposes including levies for bonds, within in the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation."

The 5 percent cap applies to all property owners of all property real, personal and possessory. The repeal of S.J.R. No. 22 of the 64th Session language repeals the tax increase of 1989 and put us back into the Constitution. What people say does not become true because it has been repeated frequently. The major mining companies are publicly traded; their information is on the Web. If there were large profits, shareholders would be looking for larger dividends.

I would like to put documents into the record: the vote on S.J.R. 15 of the 76th Session in 2011 ([Exhibit J](#)); text of Ballot Question No. 1 in 1989 ([Exhibit K](#)); the text of S.J.R. 15 of the 76th Session ([Exhibit L](#)); text of Article 10 of the Nevada Constitution, sections 1 and 2 ([Exhibit M](#)); and decisions of four Nevada Supreme Court cases ([Exhibit N](#)).

Senator Kieckhefer:

Is it your belief that if the voters approve S.J.R. 15 of the 76th Session in 2014, the Legislature would have the constitutional authority to enact NRS 362?

Mr. Wadhams:

Yes, the passage of S.J.R. 15 of the 76th Session by the voters does not repeal NRS 362. The Legislature would have the authority to deal with it at that point.

Senator Kieckhefer:

Do you believe the statutory provisions of NPOMT would be repealed by implication? We would still have constitutional authority for the statute to be in place.

Mr. Wadhams:

The method described in the statute on the valuation of the minerals, the method of collection and timing of collection including the prepayment would stay in place. If the Constitution is amended to place all property at a uniform and equal rate in the county, the county rate would be applied to the NPOMT as opposed to the 5 percent that would have been repealed.

Senator Kieckhefer:

The only way to tax minerals is as property.

Mr. Wadhams:

Would you repeat the question?

Senator Kieckhefer:

Is your position that the 5 percent rate would have to be reduced to the county rate? That would create the gap we are talking about. We would have to continue to consider NPOMT as a property tax rather than a proceeds tax or change it to a gross proceeds tax. The argument hinges on the definition taxing the mining industry on a property basis.

Mr. Wadhams:

There is no protection that mining enjoys against any other form of taxation. The Constitution has that the mineral property can only be taxed once. The tax rate is 5 percent. If we repeal the provision, it cannot be taxed more than once because we still have Article 10, section 2, but you are not precluded from considering a margins tax, net business income tax, payroll tax or any other type of taxation. The activity of mining is not exempt from taxation.

Senator Kieckhefer:

The NPOMT can be something other than a property tax?

Mr. Wadhams:

If you want to create a profits tax, the Legislature can do it. You would have a problem with Amendment 14 in the U.S. Constitution. The type of taxation on the activity of mining is not restricted by the Constitution.

Senator Kieckhefer:

If we were to statutorily exempt a mineral from ad valorem assessment and then add a proceeds tax, the mineral would not be taxed twice.

Mr. Wadhams:

All property, real, personal and possessory has to be taxed uniformly and equally. That precludes the Legislature from declaring a rock no longer property.

Senator Kieckhefer:

We exempt things from assessment through an assessment process. We are talking about taxable value to assessed value. If we said we are not going to be considering potential or claim deposits as part of the taxable value, can the Legislature consider that approach?

Mr. Wadhams:

The Legislature has the power under Article 10, section 1, subsection 6 to exempt personal property. To change the character of property may require another constitutional amendment.

Senator Brower:

The bottom line is if S.J.R. 15 of the 76th Session is adopted and the current 5 percent NPOMT rate is repealed, it could be replaced with something else.

Mr. Wadhams:

The activity of mining is not protected from taxation. Other forms of taxation are not precluded. The issue of Article 10, section 1 and the uniform, equal and just valuation is itself a body of constitutional law that would have to be considered. It has nothing to do with profits, payroll or anything else.

Senator Brower:

Without S.J.R. 15 of the 76th Session when it comes to the NPOMT on mining, it is 5 percent. There is nothing the Legislature can do about it.

Mr. Wadhams:

Yes. You have the right under that provision of the Constitution to tax at less than 5 percent.

Senator Brower:

We understand what we are talking about.

Senator Roberson:

I have respect for your intelligence, but I am not sure you have respect for our intelligence. I think you have misled the Committee on the agreement and legal opinion between Mr. Powers and yourself. I want to address the constitutional amendment from a quarter century ago. You made the argument that the taxes increased on mining, but the reality is mining wanted the amendment. The key proponent for reforming taxation on mining, the late Marvin Sedway, voted against that language. What the amendment did was strengthen the protection on mining in the Constitution. That is what we are trying to repeal this Session.

I would like to quote the words of Steve Wynn, who testified on the amendment: "The reason I am here and I have this sense of urgency in my voice is because I have fear that like other things that have happened in the State of Nevada recently, this is an attempt for one sector of the economy to insulate itself against its fair share."

He goes on to say, "This sort of thing has got to come to a halt; you have to take an intelligent, close, careful look at how you are going to face the future." And then this next statement he makes is particularly appropriate today. He said, "I am not here to deprecate, but when rhetoric is used to confuse the process of

government, then it is time to get into something of a public debate. So I am going to give you the other side of the story."

And he is referring to the legislation that amended the Constitution a quarter century ago. He said, "This was a lousy piece of legislation from the get-go. Yes, it was right to try and correct the inequity of the taxes with regard to the mining industry, but I do not think we have done a very good job of it."

I respect the intelligence of Steve Wynn and I respect yours, Mr. Wadhams. I understand you have a job to do, and you do it well. I understand you are an advocate, and I understand there is room for reasonable disagreement, but it is important to put this perspective in the record. There will be time to get into all the legal arguments if the mining industry decides to sue the State. Many of us are educated; we have read the legal opinions of the Legislative Counsel Bureau; and we have studied the issue. We are not convinced by your arguments.

Chair Kihuen:

We are going back to the supporters of the bill.

Marla Turner:

I have prepared testimony ([Exhibit O](#)). In conclusion, it is time to finish what Assemblyman Marvin Sedway started in 1987, not because he was my stepdad but because it is the right thing to do.

Al Martinez (President, Service Employees International Union Local 1107; Chair, We Are Nevada):

I have prepared testimony ([Exhibit P](#)).

Erik Schoen (Executive Director, Human Services Network):

A year and half ago, we identified our top three health and human services advocacy priorities which were access to health care, mental health and employment. Last month, we asked our members to list their top three legislative priorities for this Session. Their top priority was S.J.R. 15 of the 76th Session. I found it interesting that this would be the biggest concern for a group of health and human services providers. They have budgets they have to manage, and they know the value of a diverse budget, which allows them to provide the services as needed. They understand tax revenues are

unpredictable in the State, and S.J.R. 15 of the 76th Session makes mining pay taxes in accordance with other industries. We support this resolution.

Brian Fadie (Executive Director, ProgressNow Nevada):

We would like to thank the Senators Kihuen, Parks, Denis, Kieckhefer, Roberson and Smith for voting in favor of S.J.R. 15 of the 76th Session in the previous Legislative Session. Being here today is one step closer to a fair tax system in Nevada. I would like to thank Senator Brower for comments that indicated potential support of this resolution.

Jana Diamond-Pleggenkuhle:

I am here in support of S.J.R. 15 of the 76th Session. For the future of the State, we cannot do things the way we have been for the past century, and mining needs to pay its fair share.

Craig M. Stevens (Nevada State Education Association):

Senate Joint Resolution 15 is about fairness. All businesses should be held to the same standard. We believe this resolution passed by the voters will allow the Legislature to look at all streams of revenue equally. If this resolution passes, we know the Legislature will develop a solution for tax fairness in the industry. A positive vote on this resolution allows the voters to decide mining's constitutional protection. The Nevada State Education Association supports this resolution.

Cecilia G. Colling (Nevada Women's Lobby):

The Nevada Women's Lobby supports women and family issues. We support S.J.R. 15 of the 76th Session because we need to be looking at each business to address the problems we have in Nevada.

Keith Uriarte (American Federation of State, County and Municipal Employees, AFL-CIO Local 4041):

We support S.J.R. 15 of the 76th Session. It is time for Nevada to stop being a third-world State. The effect of exploitation is not limited to minerals. If mining is concerned about family values, it is time to invest in the future of the State.

Astrid Silva:

Our State has changed because of the severity of mining. The wounds on the land will be visible for centuries. What will be the reward for Nevada having to endure this toll? I am in support of S.J.R. 15 of the 76th Session.

Randy Pease (CRA of America, LLC):

If I own a piece of land, I pay property tax; if I decide to operate my business off the land, I also pay business tax. Mining does not have to do the same.

Sebring Frehner:

I support S.J.R. 15 of the 76th Session and thank the Committee for moving this legislation forward and letting the voters decide.

Robert Kern:

I support S.J.R. 15 of the 76th Session. Nevadans understand there will always be a tax burden. The question is who bears the tax burden? When mining companies do not have to pay the same as other businesses in Nevada, small business and the people of Nevada, have to bear mining's share of that burden. My business involves providing services to the people of the State. Why should I be taxed more heavily than a business taking natural resources out of Nevada for the profit of an foreign incorporation? The idea of requiring uniform taxation means you cannot tax the extraction of minerals seems intellectually dishonest.

Kelly Charles:

Enacting S.J.R. 15 of the 76th Session would open mining up to some sort of taxation. An alternative would be to tax the displacement of the ore or dirt. It would be easy to track because we could attach it to the prevailing 90-day average of gold. In researching through NRS, I see no reason why it could not be done.

Chair Kihuen:

If you are in support of S.J.R. 15 of the 76th Session, please raise your hands in Las Vegas. Any opposition, please raise your hands. For the record, the majority of people in Las Vegas are in support. Is there any public comment?

SENATOR PARKS MOVED TO DO PASS S.J.R. 15 OF THE 76th SESSION.

SENATOR ROBERSON SECONDED THE MOTION.

Senator Brower:

The debate today was welcomed and of great value. Sometimes the debate can become distorted, and it is important as we move forward with tax policy that it makes sense not to let it become distorted. Mining companies do pay taxes, and

they pay a lot of taxes. The issue with S.J.R. 15 of the 76th Session is whether mining tax policy should be determined by an old restriction in the Constitution or whether it should be decided by this Legislature—the representatives of the people. We are talking about giving the voters a chance to say the restrictions, eliminations and the cap in the Constitution should be removed. The representatives in Carson City should be able to make the decision session to session. There will be other debates on how we tax mining going forward. I voted against this legislation during the 76th Session. My opinion has evolved as I have studied the legal opinions, and bringing taxation control back to the Legislature is the right thing to do. I will be voting yes.

Senator Denis:

I supported this legislation during the 76th Session, and I did not hear anything today that would change my vote. I will support it again.

Chair Kihuen:

I want to thank my colleagues for coming together in a bipartisan way, and I think that is what Nevada voters want to see.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Assemblyman Ira Hansen, (Assembly District No. 32):

This Committee does not have a person representing rural Nevada where all the taxes are paid. In 1954, we passed a law so we would not tax inventory in warehouses. In 1960, when we put into the Constitution a protection to ensure inventories would not be taxed, we had a huge expansion of the warehouse industry, and that protection remains in the Constitution today. One of the problems Nevada has had in developing our economy is our tax policy. With the uncertainty, we have a hard time getting businesses to relocate to Nevada.

People say Nevada has the gold; the reason we know is that the industry we are taxing has invested billions of dollars exploring to find the gold. Mining knew we had a protection in the Constitution that would allow them to make a profit on the investment. The reason we do not see a big gold industry in California is that the regulatory and tax climate discourages people from investing in exploration. We need to be careful with this one because we are going to ruin the golden opportunity to have tax revenue. A decade ago, the economy in

Winnemucca and Elko had collapsed because the price of gold had collapsed. The mining industry is highly volatile to these kinds of swings. We have tried to come up with a balanced way of assessing taxation to ensure we have stable revenue source. If we have a substantially large increase in mining taxes, we are going to have a bigger financial mess because of the potential instability. The price of gold is high now, but it will change. It always has.

Ms. Turner:

I want to thank the Committee for your action on S.J.R 15 of the 76th Session. In 1989, S.J.R. No. 22 of the 64th Session passed, it passed in the rural counties at a rate of 3 to 1. The mining industry that paid more taxes has done fine.

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Chair Kihuen:

With no further business to come before the Senate Committee on Revenue and Economic Development, the meeting adjourned at 3:12 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Ruben J. Kihuen, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	11		Attendance Roster
S.B. 238	C	2	Alan H. Glover	Prepared Testimony
S.B. 301	D	3	Senator Debbie Smith	Prepared Testimony
S.B. 301	E	16	Michael D. Hillerby	Proposed Amendment to SB 301
S.B. 301	F	3	Propel Financial Services	Tax Lien Transfers
S.J.R. 15 of the 76th Session	G	28	Legislative Counsel Bureau	Legal Opinions
S.J.R. 15 of the 76th Session	H	2	Joe McCarthy	Prepared Testimony
S.J.R. 15 of the 76th Session	I	11	James Wadhams	Explanation-Question No.1-S.J.R. No. 22 of the 64th Session
S.J.R. 15 of the 76th Session	J	3	James Wadhams	2011 Vote
S.J.R. 15 of the 76th Session	K	2	James Wadhams	Question No.1-S.J.R. No. 22 of the 64th Session
S.J.R. 15 of the 76th Session	L	3	James Wadhams	2011 S.J.R. 15 Text
S.J.R. 15 of the 76th Session	M	4	James Wadhams	Article 10 Text-Nevada Constitution
S.J.R. 15 of the 76th Session	N	29	James Wadhams	Nevada Supreme Court Cases
S.J.R. 15 of the 76th Session	O	2	Marla Turner	Prepared Testimony
S.J.R. 15 of the 76th Session	P	1	Al Martinez	Prepared Testimony