

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Eighty-Second Session  
February 17, 2023**

The Committee on Ways and Means was called to order by Chair Daniele Monroe-Moreno at 10:10 a.m. on Friday, February 17, 2023, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/82nd2023](http://www.leg.state.nv.us/App/NELIS/REL/82nd2023).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Daniele Monroe-Moreno, Chair  
Assemblywoman Shea Backus, Vice Chair  
Assemblywoman Natha C. Anderson  
Assemblywoman Tracy Brown-May  
Assemblywoman Michelle Gorelow  
Assemblyman Gregory T. Hafen II  
Assemblywoman Sandra Jauregui  
Assemblywoman Heidi Kasama  
Assemblyman Cameron (C.H.) Miller  
Assemblyman P.K. O'Neill  
Assemblywoman Sarah Peters  
Assemblyman Howard Watts

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Jill Dickman (excused)  
Assemblyman Steve Yeager (excused)

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Sarah Coffman, Assembly Fiscal Analyst  
Bryan J. Fernley, Legislative Counsel  
Brody Leiser, Assembly Chief Principal Deputy Fiscal Analyst  
Michael Nakamoto, Chief Principal Deputy Analyst  
Asher A. Killian, Chief Deputy Legislative Counsel  
Adam Drost, Principal Program Analyst  
Carmen M. Neveau, Committee Secretary  
Janet Osalvo, Committee Assistant

**OTHERS PRESENT:**

Amy Stephenson, Director, Office of Finance, Office of the Governor  
Chris Daly, Deputy Executive Director, Government Relations, Nevada State  
Education Association  
Nikki Bailey-Lundahl, Director of Government Affairs, Nevada Mining Association

**Chair Monroe-Moreno:**

[Roll was taken, and Committee rules and protocol were discussed.] We will start today with Assembly Bill 152.

**Assembly Bill 152: Makes an appropriation to restore the balance in the Reserve for Statutory Contingency Account. (BDR S-909)**

**Amy Stephenson, Director, Office of Finance, Office of the Governor:**

I thank you for the opportunity to present Assembly Bill 152. This bill replenishes the Statutory Contingency Account in the amount of \$42,139,109. Approximately \$32 million of this amount is for court settlements and \$9 million is to reach the targeted balance of \$15 million in this account. This concludes my presentation, and I await any questions you may have for me.

**Chair Monroe-Moreno:**

Are there any questions from Committee members?

**Assemblywoman Backus:**

Was the \$32 million an outstanding balance on claims that were previously agreed to be paid through the Interim Finance Committee?

**Amy Stephenson:**

Yes, that is exactly what happened.

**Chair Monroe-Moreno:**

Are there any other questions from Committee members? [There were none.]

Is there any testimony in support of A.B. 152? [There was none.] Is there any testimony in opposition to A. B. 152? [There was none.] Is there any testimony in neutral on A.B. 152? [There was none.] We will close the hearing on A.B. 152 and open the hearing on Senate Bill 124 (1st Reprint).

**Senate Bill 124 (1st Reprint): Revises provisions relating to the tax upon the net proceeds of minerals and royalties of mining operations. (BDR 32-908)**

**Michael Nakamoto, Chief Principal Deputy Analyst:**

I will be going through certain sections of S.B. 124 (R1) dealing with the tax aspects of this bill. This bill relates to net proceeds earned by mining operations in the state of Nevada. This tax is imposed at a rate of between 2 percent and 5 percent, depending on the ratio of net to gross proceeds. There are statutory formulas to determine what the rate should be and there are exceptions to this formula. For example, geothermal operations are taxed exclusively at the property tax rate of the district in which that operation is located. If the operation's net proceeds exceed \$4 million, the rate is set at 5 percent. Royalties are the portion of proceeds from the extraction of a mineral which are paid for the privilege of extracting that mineral. Royalties are also taxed at 5 percent.

The minimum rate that can be imposed on any operation is the property tax rate of the district in which the operation is located. If that rate happens to be higher than the rate set in statute, then that is the rate that would apply. Local governments such as cities, counties, and school districts, get their proportionate share of the tax based on their property tax rate. The state gets a 17-cent portion that is deposited in the Consolidated Bond Interest and Redemption Fund. The balance that includes anything above those rates goes to the State General Fund—at least in fiscal year (FY) 2023. Beginning in FY 2024, those proceeds will be deposited to the State Education Fund pursuant to Assembly Bill 495 of the 81st Session.

I am going to go through the tax portions of S.B. 124 (R1). I will start with sections 1 and 2 because those sections deal with one issue, and then I will go through sections 3 and 4 which deal with a separate issue. Sections 1 and 2 deal with the distribution of the 75-cent portion of the net proceeds that go to the school district. Under the Nevada Plan, the money from this 75-cent portion was sent to each school district and used as local funds. Senate Bill 543 of the 80th Session changed the funding formula to the Pupil-Centered Funding Plan. What that bill did not do was to change the distribution of how that money was sent from the state to the school districts.

Under current law, for the portion of net proceeds from minerals tax that are sent to local governments including counties, cities, and school districts, the state sends those revenues to the county. The county treasurer is then required under current law to apportion those revenues to each respective local government, and the county gets to keep a commission. This commission amounts to 5 percent, of which 3 percent goes to the county general fund and 2 percent goes to a fund used by the county assessor for the acquisition and improvement of technology within that office. This means that money that went to a school district went through the same process as money that went to the county or cities. Even though the

Pupil-Centered Funding Plan changed the process so that all school district revenues, instead of going to school districts, now go to the State Education Fund, the distribution for the net proceeds of minerals stayed the same.

Under current law, as specified in *Nevada Revised Statutes* (NRS) 362.170, subsection 2, paragraph (c), money sent to a county for the State Education Fund is then sent by the county back to the State Education Fund and the county gets to keep 5 percent of that. Sections 1 and 2 address that situation. That money, instead of going to the counties and then returned from the county to the State Education Fund, will be sent by the state directly to the State Education Fund, bypassing that distribution.

Sections 3 and 4 deal with when net proceeds of minerals taxes are paid. Prior to the pandemic, on or before May 10 of each year, mining companies would pay their net proceeds of minerals tax that were due for actual mining activity in the previous calendar year. We will use FY 2020 as the sample year because this is the last fiscal year for which this situation occurred. On or before May 10, 2020, mining operators would remit payment for net proceeds of minerals tax to the Department of Taxation based on their actual calendar year 2019 mining activity. Then, we had the COVID-19 pandemic and there was a desire to gain additional revenue. The Legislature, in Senate Bill 3 of the 31st Special Session, provided for a prepayment of net proceeds of minerals tax for the State General Fund portion. This was similar to what the Legislature did during the Great Recession.

To summarize, beginning in FY 2021, not only were mining companies required to make their actual payment for calendar year 2020 on or before May 10, 2021, but the mining companies were also required to make an estimated payment for their calendar year 2021 activity on or before March 1, 2021. This caused the mining companies to record two years of revenue for this revenue source in the State General Fund in FY 2021. Going forward, mining companies would continue to make estimated payments in FY 2022 and FY 2023, along with a true up for previous years. The intent of S.B. 3 of the 31st Special Session was that the process would revert back. For FY 2024, the way the law is drafted and under current law, the mining companies no longer have to make that estimated payment. The only thing the mining companies must do is make the true up payment in their FY 2024 base to get their actuals for calendar year 2023 to match with their estimated payments that were made in the previous fiscal year.

When S.B. 3 of the 31st Special Session was enacted, Fiscal Analysis Division staff noted that there would be no revenue generated for this revenue source to the State General Fund in FY 2024. This was because the accelerated payments that had been made had to be given back. The consequence from this is that the Legislature passed Assembly Bill 495 of the 81st Session which, beginning in FY 2024, moved these proceeds from the State General Fund to the State Education Fund. If you were to look at the Economic Forum sheets for FY 2024, we have a forecast of zero for the net proceeds of minerals tax.

Sections 3 and 4 of Senate Bill 124 (1st Reprint) move the date for the end of the prepayment from FY 2024 to FY 2023. Those changes go back to the language in S.B. 3 of the 31st Special Session and move the expiration date of those provisions forward by one year. This will take the estimated payment mining companies are supposed to make on or before March 1, 2024, that is supposed to go to the State General Fund this year, and instead mining companies would make their payment in FY 2024 based on their actual FY 2023 mining activity. Those proceeds would go to the State Education Fund.

**Chair Monroe-Moreno:**

I am going to ask members to hold questions on this part of the presentation until later. We will continue with the presentations on this bill.

**Bryan J. Fernley, Legislative Counsel:**

Senate Bill 124 (1st Reprint) is a technical amendment to clarify aspects of how the net proceeds of minerals is handled in the State Education Fund and through the Pupil-Centered Funding Plan. I will turn this presentation over to Asher Killian who will discuss that amendment and the relevant sections.

**Asher A. Killian, Chief Deputy Legislative Counsel:**

The provisions we are going to cover are technical amendments that were made to ensure that, to the extent that there have been any questions about the Pupil-Centered Funding Plan and how it operates in relation to the net proceeds of minerals tax, that those provisions are carried out in a constitutional manner consistent with the original intent of the Legislature.

I would like to describe the constitutional framework. Article 4, Section 21 of the *Nevada Constitution* is Nevada's equivalent of an equal protection clause. Article 11, Section 2 of the *Nevada Constitution* requires the Legislature to create a uniform system of common schools. These provisions, taken together, require the Legislature to equitably fund schools in Nevada statewide, regardless of zip code. However, one provision of the *Nevada Constitution* that Mr. Nakamoto referenced, Article 10, Section 5, requires net proceeds of minerals money to go back to the counties where the minerals were mined. That happens in a manner that is not necessarily equitable because not all counties in Nevada have an equal amount of minerals in the ground. The Nevada Plan, and the Pupil-Centered Funding Plan that followed it, combined these constitutional provisions to provide funding to K-12 education in Nevada in a manner that was as equitable as possible given that one inequitable distribution of money that is required by the *Nevada Constitution*. That is why there are provisions in the Pupil-Centered Funding Plan that deal with the distribution of net proceeds of minerals money differently than other money that flows through the Pupil-Centered Funding Plan.

I want to note two statutory provisions before we get into this bill. The first provision is NRS 387.1213. This provision in the Pupil-Centered Funding Plan creates the Education Stabilization Account and is basically a rainy-day fund just for education. This regulation further requires any money more than 16.6 percent of the total budgeted ending fund balance in each county school district fund to be turned over to the Education Stabilization Account in the State Education Fund each year. This allows school districts to keep two months of

reserve and then anything more than two months of reserve gets turned over to the Education Stabilization Account to serve as a rainy-day fund for education in the state.

The other provision I want to mention is NRS 387.1214. This provision describes how money flows out of the State Education Fund to the county school districts. Subsection 6, paragraph (a), provides that, to the extent a county school district is entitled to net proceeds of minerals money, the first money distributed from the State Education Fund to that county school district is the net proceeds of minerals money to which the school district is entitled. Paragraph (b) provides that, to the extent that the county school district would be entitled to more net proceeds of minerals money than it would otherwise be entitled to through the Pupil-Centered Funding Plan or excess net proceeds of minerals money, that money also flows back to the county school district in the form of a continuing appropriation to mitigate the cyclical nature of the mining industry. In other words, under the Nevada Plan, counties were kept whole for the net proceeds of minerals money because that money flowed directly to the county. Under the Pupil-Centered Funding Plan, that money flows into the State Education Fund first but counties are kept whole in that all money that they would have received, they either received through Pupil-Centered Funding Plan dollars or through this continuing appropriation. No money is lost by the school districts. That money is just accounted for in the State Education Fund first.

Moving to the four technical changes, the first change is in section 2.3, subsection 5, paragraph (c) of S.B. 124 (R1). This concerns the excess net proceeds of minerals money above and beyond what the district would otherwise be entitled to pursuant to the Pupil-Centered Funding Plan. The change in this paragraph is to make it explicit, as was the intent with the original Pupil-Centered Funding Plan legislation, that this excess net proceeds of minerals money is exempt from being transferred to the Education Stabilization Account. To the extent that one of these school districts which receives excess net proceeds of minerals money still has money above 16.6 percent of their total budgeted ending fund balance in any fiscal year, that school district gets to keep that excess net proceeds of minerals money. This excess amount is not subject to reversion to the Education Stabilization Account.

The second technical change in S.B. 124 (R1) is found in section 2.3, subsection 5, paragraph (b). The portion of net proceeds of minerals money that is for debt service or capital obligations does not flow through the Pupil-Centered Funding Plan. The Pupil-Centered Funding Plan is for operational funds for schools and not for capital funds for schools. The intent of this paragraph is to make it clear that, to the extent there is any capital funding or debt-service funding that is in a county school district's general fund as opposed to a separate capital or debt-service fund, that money is also exempt from being turned over to the Education Stabilization Account. That money would not be reverted to the Education Stabilization Account, even if it is more than 16.6 percent of their total budgeted ending fund balance.

The third technical change is in section 2.3, subsection 5, paragraph (a), and in section 5.5 of S.B. 124 (R1). This concerns school districts that already were holding a reserve of more than 16.6 percent when the Pupil-Centered Funding Plan became effective. Under section 77 of Senate Bill 543 of the 80th Session, there was a slightly complicated mechanism where, instead of having a baseline of 16.6 percent, any district that had a higher reserve as of June 30, 2020, had that reserve level set as their cap. That district was able to keep a reserve up to that cap without turning money over to the Education Stabilization Account. Any money by which a school district exceeded that cap in future years would be turned over. If a school district did not keep a reserve up to that cap, but was still above 16.6 percent, then that became their new cap amount in the next fiscal year. Once a school district got down to a reserve of 16.6 percent in some future fiscal year, that cap kicked in for them, just like all other school districts. It is a kind of a ratcheting-down mechanism for districts that were keeping a reserve in excess of what the Pupil-Centered Funding Plan contemplated. As you can tell, this is a complicated mechanism. The main reason for the complicated plan was that the Pupil-Centered Funding Plan was not becoming effective immediately, so we did not know what date it would kick in, and we did not know what dollars would be affected. Section 2.3, subsection 5, paragraph (a), and section 5.5 of S.B. 124 (R1) repeal that complicated framework and replace it with a simpler approach. Any Nevada Plan dollars that a county school district had on or before June 30, 2020, are exempt from being turned over to the Education Stabilization Account. We are only applying the 16.6 percent reserve cap to Pupil-Centered Funding Plan money going forward.

The final change in section 2.5 of S.B. 124 (R1) is a provision I mentioned earlier. Net proceeds of minerals dollars are considered to be the first dollars from the State Education Fund into a county school district fund. The intent of this provision was always also that these dollars would be the first dollars out of a county school district fund when money is spent each fiscal year. This provision makes it explicit that these dollars are also the first dollars out of a county school district fund and is an accounting measure. I believe the State Treasurer may have previously said that money is not only fun, but it is also fungible. This is meant to account for that. Once net proceeds from minerals dollars go into a county school district fund and get mixed in with dollars from other sources, those dollars lose their character as net proceeds of minerals money when that money is spent. The dollars cannot be tracked anymore. This section carries out the intent that for accounting purposes, those net proceeds of minerals dollars lose their character, and they are the first dollars out of the county school district fund each year. The purpose of this provision is to ensure net proceeds of minerals dollars are constitutionally protected and to ensure that the Pupil-Centered Funding Plan is carried out in a way that complies with the constitutional provision to protect those net proceeds of minerals dollars to the greatest extent possible.

Those are the four technical changes that were in S.B. 124 (R1) that were not strictly fiscal but were related to the net proceeds of minerals tax.

**Chair Monroe-Moreno:**

Are there any questions from Committee members?

**Assemblyman Hafen:**

You mentioned that 16.6 percent would be the cap going forward. Could you clarify; does that mean going forward from when this act goes into effect, or are we talking about going forward from June 30, 2020?

**Asher A. Killian:**

The framework that was set up in S.B. 543 of the 80th Session was that the benchmark date for the changeover from the Nevada Plan to the Pupil-Centered Funding Plan was June 30, 2020. That is the same date being used in this bill. All dollars received on or before June 30, 2020, are being exempted from being turned over to the Education Stabilization Account. Those dollars will be kept by the school districts, and we are only looking at dollars after June 30, 2020, that will be subject to the 16.6 percent cap.

**Assemblywoman Anderson:**

My first question is about the cap of 16.6 percent. You mentioned that there were some districts that currently utilize the cap. Can we get that list? My second question is for those school districts that have exceeded the cap. Is that amount protected or earmarked for specific items, or can the money be used to pay other bills incurred?

**Asher A. Killian:**

Part of that question may need to be answered by the Department of Education. I think they do have a list of districts currently in that situation. I am not sure if our Fiscal Analysis Division staff has that list on hand. For the second part of your question, these dollars would be county school district general fund dollars, so the funds would be available for any use that the county school district wishes. This may be a question for the counties as to whether they have the funds earmarked for specific uses, but generally the funds would be available for whatever the district wishes.

**Assemblywoman Anderson:**

These funds are not earmarked by the state or protected from state language that is being proposed at this time. Districts, however, can decide in a board of trustees meeting to earmark the funds, but that is done in an open meeting. Is that correct?

**Asher A. Killian:**

Yes. The school district would have to decide how to spend those dollars at a local level. All this bill does is to protect the funds from being turned over to the Education Stabilization Account at the state level.

**Assemblyman Hafen:**

Can we find out if any of those funds above the 16.6 percent cap have already been spent by the individual counties?

**Asher A. Killian:**

We can coordinate getting that information from the department. I am not sure if our Fiscal staff has it, but we will get it to you.



**Chair Monroe-Moreno:**

I had anticipated that the Department of Education would be here this morning to present and answer questions. However, we received a call just before the meeting explaining that the Department representatives were not going to be able to attend. Department of Education staff did raise concerns with Fiscal staff regarding section 2.3, subsection 5, paragraph (a), which provides for certain exclusions of money to be accounted for when calculating the amount to be transferred from a county school district ending fund balance to the Education Stabilization Account. Specifically, this excludes any funds deposited in a county school district ending fund balance that were collected on or before June 30, 2020, which could include prior year net proceeds of minerals revenue. The Department of Education expressed a concern because the ending fund balance referenced in subsection 5, paragraph (a), pertains to the actual ending fund balance. However, the calculation provided for in section 2.3, subsection 1, references the budgeted ending fund balance. This creates an inconsistency in the calculation methodology. The issue is actual amounts versus budgeted amounts. To address that discrepancy, I would like to ask our Legal staff to draft an amendment to standardize the language, so the actual ending fund balance is referenced in both subsections 1 and 5.

**Asher A. Killian:**

We certainly can draft that amendment. Since the intent of these technical amendments was to protect the constitutional status of net proceeds of minerals money, it was an intentional choice to use "actual" rather than "budgeted" in that paragraph, because obviously net proceeds of minerals could come in high or low. If we used the budgeted balance rather than the actual balance, there is a possibility that there may have been some actual net proceeds of minerals dollars that were not budgeted, and that could still be swept. The intent of the change to "actual" in this paragraph is to protect every net proceeds of minerals dollar that was received as of that date. It was an intentional choice, but we can certainly draft an amendment to reflect a similar methodology throughout the section.

**Chair Monroe-Moreno:**

Thank you. Are there any questions from Committee members? [There were none.] With the amendments, we would be closing the gap so we will not have a deficit in the Education Stabilization Account for fiscal year (FY) 2024. Is that correct?

**Michael Nakamoto:**

That is correct.

**Chair Monroe-Moreno:**

It has just come to my attention that we do have the list of the school districts that were at the 16.6 percent cap.

**Adam Drost, Principal Program Analyst:**

The Department of Education ran calculations to determine those school districts that would have a budgeted ending fund balance above 16.6 percent in FY 2020. Based on the

information provided to the Fiscal Analysis Division, it appears that Esmeralda, Eureka, Storey, and White Pine County school districts all had a balance greater than 16.6 percent.

**Chair Monroe-Moreno:**

With that information, do Committee members have any follow-up questions?

**Assemblywoman Peters:**

We have had many conversations about how schools and school districts must manage budgets because we are on a biennium cycle. This creates problems and frustrations for school districts with hiring practices, additional staffing, buying books, and replacing facilities. My question is, what are the four counties with an excess amount over 16.6 percent holding money to purchase? What is it that they need? Or are the school districts holding the funds because they are not staffed to administer the funds? Is it essential for the school district to hold those dollars, and can they ever use those dollars for what they anticipated needing to purchase?

**Asher A. Killian:**

Unfortunately, most of those questions would have to be directed to those school districts to ask why they built up reserves and what their planned use was. Moving forward, school districts would still be able to keep those reserves since the reserves would be pre-June 30, 2020, and school districts would still be able to use the reserves as they see fit. I do not believe we have information about why school districts may have built reserves or whether school districts have any intended uses for the reserves.

**Assemblywoman Kasama:**

I was wondering if those excess funds had to be returned, but it sounds like the school districts can keep the reserves.

**Asher A. Killian:**

Yes. This bill makes it explicit that those dollars received before the benchmark date belong to the school district and are not subject to reversion to the Education Stabilization Account.

**Chair Monroe-Moreno:**

I see no other questions from Committee members. Is there anyone who would like to testify in support of Senate Bill 124 (1st Reprint)?

**Chris Daly, Deputy Executive Director, Government Relations, Nevada State Education Association:**

I represent the Nevada State Education Association (NSEA), the voice of Nevada educators for over 120 years. The NSEA does support S.B. 124 (R1) to ensure that net proceeds of minerals intended for Nevada schools make it to Nevada schools. We have read the technical amendments many times, and while they seem a bit confusing, we believe Mr. Killian when he describes the amendments as technical and upholding both the *Nevada Constitution* and the intention of previous legislation like Senate Bill 543 of the 80th Session. We support S.B. 124 (R1) as amended. Thank you for your time.

**Chair Monroe-Moreno:**

Is there any further testimony in support of S.B. 124 (R1)? [There was none.] Is there any testimony in opposition to S.B. 124 (R1)? [There was none.] Is there any testimony in neutral on S.B. 124 (R1)?

**Nikki Bailey-Lundahl, Director of Government Affairs, Nevada Mining Association:**

I represent the Nevada Mining Association. The association is proud to be your partner in education, creating quality jobs, and helping to finance critical state services. For the last three recessions, the mining industry has taken the extraordinary step of prepaying our taxes. We do this to help bridge the gap between economic crisis and budget shortfall. If the state believes that this is the time to stop prepayment and resources are available to do that, we have no issue with stopping prepayments.

**Chair Monroe-Moreno:**

Is there anyone else who would like to testify in neutral on S.B. 124 (R1)? [There was no one.] I will close the hearing on S.B. 124 (R1). I will open the hearing for public comment. Is there anyone who would like to provide public comment? [There was no one.]

This meeting is adjourned [at 10:53 a.m.].

RESPECTFULLY SUBMITTED:

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Carmen M. Neveau  
Committee Secretary

APPROVED BY:

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Assemblywoman Daniele Monroe-Moreno, Chair

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

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.