THE SIXTH DAY

CARSON CITY (Sunday), February 28, 2010

Assembly called to order at 1:03 p.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, April Mastroluca.

Heavenly Father, all around us we see the signs of Spring appearing. It is a reminder that even after difficult times, You renew us. Like the flowers bursting from the earth and the leaves appearing on the trees, we, too, are renewed.

Today, we ask to be renewed after many arduous days of working to find solutions for the people of Nevada. We ask that You bless the people who supported us, watched over us, and helped us. Please protect those who are traveling today and those who are waiting for our return.

Every day, the sun rises and we are given the opportunity to begin again. We can experience Spring every day, through the sacrifice Your Son made on our behalf. It is our duty to use that gift to improve the lives of those around us. In Your Son's Name we pray.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 27, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 7 to Senate Bill No. 3.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 4.

Assemblyman Oceguera moved that the bill be referred to the Committee of the Whole.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 3, 4, and 5; Assembly Concurrent Resolution No. 2; Senate Bills Nos. 2 and 3.

Assemblyman Oceguera moved that the following persons be accepted as accredited press representatives, that they be assigned space at the press table in the Assembly Chambers and that they be allowed use of appropriate broadcasting facilities: KTVN-TV: Bradley William Horn; THE NEVADA SAGEBRUSH: Emerson Marcus.

Motion carried.

Assemblyman Oceguera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering Assembly Bill No. 2 and Senate Bill No. 4.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 1:07 p.m.

Chair Buckley presiding.

Quorum present.

Assembly Bill No. 2 considered.

CHAIR BUCKLEY:

We have now resolved ourselves into the Committee of the Whole and the Committee will come to order. I am going to open the hearing on SB4 and I will ask that whoever would like to present this bill from the Administration, Mr. Duarte……we thank you for waiting 20 hours for your hearing to be held and for coming in on a Sunday. Mike, we saw your daughter with you earlier, so we appreciate her coming here on a Sunday as well.

So the first thing we will do is distribute the bill for the members. Senate Bill 4; would members like to get a hard copy of the bill or would you like to read along in your computer; whatever the pleasure of the group?

If you would like a hard copy before we proceed, please raise your hands. All right, we will wait until there are copies on every member's desks. Why don't I close the hearing on that. Chuck, you can stay right there.

Committee, we have another bill in committee, that is Assembly Bill 2. This was a measure I assigned to an informal subcommittee of one, consisting of Assemblywoman Kirkpatrick, to review the many issues that came up in the hearing of that bill. Assemblywoman Kirkpatrick, do you have a report back to us?

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. I did draft an amendment that I think addresses all the issues that we had on this bill when it was first heard. One of the concerns that we heard was the definition of "severely financial." We did take that out. In light of the other furlough bill that we passed out yesterday from the Assembly, we took the state portion out of this bill and this bill now just allows local government, particularly the counties, to have the option of going to a four ten day, four days a week, ten hours a day option. They do have to bring a plan back to the local board so that there is some discussion. A resolution will be drafted. Most importantly, there is a sunset date on this because I think we need to make sure that it works, so next session, they can come back and have the ability—but we also included within their plan that they had to show that it was fiscally neutral or had cost savings, because we didn't want them to go out and do it and actually cost local governments more money. That is the amendment that I have brought forward.

CHAIR BUCKLEY:

Do all members have copies of that amendment on their desk?

ASSEMBLYWOMAN KIRKPATRICK:
Yes.

CHAIR BUCKLEY:
Do any members have any questions about the approach being taken and the amendment or need further clarification from Assemblywoman Kirkpatrick? Seeing none, the chair would accept a motion.

Assemblyman Hardy moved to amend and do pass Assembly Bill No. 2.
Seconded by Assemblyman Arberry.
Motion carried.

Senate Bill No. 4 considered.

CHAIR BUCKLEY:
Let's now take up Senate Bill 4. Do all members have a copy of this measure before them? Yes. Ok, Mr. Duarte, thank you; you may proceed.

CHARLES DUARTE, ADMINISTRATOR OF THE DIVISION OF HEALTH CARE FINANCING AND POLICY:
Thank you, Madam Chair. Good afternoon, members of the Assembly. It is an honor to be here today to present Senate Bill 4.

Senate Bill 4 removes restrictions that prohibit the Division from appropriately managing pharmacy program expenditures. The estimated savings associated with this proposed legislation is $760,000 in State General Funds for the current fiscal biennium. The Division has managed a preferred drug list since 2004 that provides recipients with therapeutically equivalent pharmaceuticals and it does this in a safe manner. In addition, it has reduced the trend in pharmacy expenditures in the Medicaid program by allowing the Division to collect supplemental rebates. The initiative has saved over $13 million since 2004.

Currently in the NRS, Section 422.4025, it requires the Department to establish a preferred drug list, but excludes from the management through a preferred drug list of six classes. Those six classes of drugs consist of anti-psychotic medications, both atypical and typical anti-psychotic medications, anti-convulsant medications, anti-rejection medications for organ transplants, any diabetic medications, HIV and AIDS drugs, and anti-hemophilic drugs. We are specifically requesting an amendment that allows us to deal with three of those classes through the preferred drug list.

For those of you who weren't around and haven't heard this presentation before, the preferred drug list is a list of drugs that are covered without prior authorization. When prescribed, these drugs allow the state to receive supplemental rebates from drug manufacturers, which lowers the net cost of the drug to the State of Nevada. We do have a Pharmacy and Therapeutics Committee, made up of Nevada licensed physicians and pharmacists, to decide which drugs in each class should be considered preferred products. There are groups of similar drugs, which are known as a therapeutic class; these are not chemically equal drugs; they are not generic drugs; these are drugs that have the same therapeutic result or outcome, and they are considered a class of drugs. These classes are reviewed by the P&T, or Pharmacy and Therapeutics Committee, to determine if they are appropriate for comparison, and by that I mean that they are therapeutically equivalent. The Committee then decides that if they are equally effective or therapeutically equivalent, which ones should be preferred. They do this without consideration of cost or savings to the State. They do it purely on a clinical basis.

One of the most frequent concerns we hear about the PDL, the Preferred Drug List, is that we are denying medications to recipients. This is not true. Commercial health plans, the Medicare Program, the VA Program—all of these can limit drug availability through what we call hard formularies. I think that those of you who have your own health plans know that only certain drugs are available at low cost and as you go to different tier levels in your health plan, you pay more out of pocket and sometimes, they are not even covered.

In the case of the Medicaid Program, federal law requires us to provide all FDA approved medications for their approved indications to Medicaid recipients; we cannot deny any drug. We

can establish, however, medical criteria for certain drugs as a way of controlling utilization. This prior authorization process is widely used by Medicaid programs to manage prescription drug use. Prior-auth is a common requirement that the prescribing practitioner, or physician, get approval from the PAR before the drug is dispensed and paid for. Preferred drugs do not usually require prior authorization.

There are a number of safety provisions in federal law that we adhere to that protect patients and some of these include the fact that prior authorizations must be approved within 24 hours, so from the time the physician calls in to try to get a non-preferred product, we have 24 hours to respond. I can tell you that phone calls— phone call prior authorizations—which make up about half of our prior authorizations, are responded to in three minutes, and so they are approved or denied within three minutes.

Additionally, we have a very low rate associated with the preferred drug list of denials, so physicians do know that they have to give us certain kinds of clinical information to get a non-preferred product approved through this prior authorization process.

We also have a list of clinical criteria established by the P&T Committee for non-preferred drugs, and these clinical criteria include things like allergies to preferred medication; if there is a medical contraindication, or a drug-drug interaction with a preferred product within the same class; a history of the patient's toxic side effects or unacceptable side effects to a preferred drug; a therapeutic failure of a preferred drug; an indication which is unique to a non-preferred product which is supported by peer review literature. Sometimes a non-preferred product in a class may have a special indication or clinical use for which you want to make sure that it is available to the patient through this process. So there are a number of clinical protections that we afford people.

Preferred drug lists are used widely throughout the United States. A survey of 40 states found that 37 had preferred drug lists, 25 of these states also managed the preferred drug list anti-psychotic medications.

I am going to briefly go through the bill with you. Section 1, subsection 2 of the bill—what this does—it establishes three classes of drugs that we want to use in our preferred drug process. The three classes that we are removing from this exclusion are atypical and typical anti-psychotic medications, anti-convulsant medications, and anti-diabetic medications; these are both insulins and oral medications for diabetes.

Section 1, subsection 3 of the bill adds a clinical criteria to the list of criteria already there and this particular criteria is that for these classes, if a patient experiences one therapeutic failure, that they would have a non-preferred product available to them.

Section 1, subsection 4 of the bill provides that we have to offer continued availability of preferred products until the P&T Committee decides which products in these three classes I discussed should be preferred, and the three classes again are anti-psychotic, anti-convulsants and anti-diabetic medications. Or if there is a new indication for the use of a drug, again, we can't restrict use until P&T Committee acts on it.

Section 1, subsection 5 requires prior authorization for new drugs and new indications. Section 1, subsection 6 is another protection measure where we will grandfather all patients currently receiving medications in these three classes, so that those drugs are available to them on an ongoing basis until their therapy changes.

Section 2 of the bill—what this does is allow the Medicaid program to continue to cover drugs in these classes until the committee acts, so this committee again would be the Pharmacy and Therapeutic Committee.

Section 3 of the bill—what this does is establish reporting time frames and a sunset on the bill. We will be reporting to the Legislature on December 31, 2010 as to the status of the implementation of our preferred drug list. We will be reporting back on June 30, 2011 and this bill sunsets on June 30, 2011.

One final thing I would like to note is that we are going to be working with the Legislative Committee on Healthcare to establish criteria for the reports that are included in this bill, so that will be done through a letter and discussion with members of the Legislative Committee on Healthcare.

I am available to answer any questions that you may have.

CHAIR BUCKLEY:
Thank you very much, Mr. Duarte. Assemblywoman Leslie.

ASSEMBLYWOMAN LESLIE:
Thank you, Madam Chair. Chuck, why are we sunsetting it? It is only less than a year….

CHARLES DUARTE:
I think there were some concerns about it ongoing and they wanted to make sure that the full Legislature had an opportunity to review this once again.

ASSEMBLYWOMAN LESLIE:
So, are you anticipating that we will be reviewing it during the 2011 Session and then make a decision there?

CHARLES DUARTE:
That is our hope.

ASSEMBLYWOMAN LESLIE:
Your preference would be not to sunset it, I would assume.

CHARLES DUARTE:
That is correct, Ms. Leslie.

ASSEMBLYWOMAN LESLIE:
So would mine; okay; thank you.

CHAIR BUCKLEY:
Mr. Duarte, if you count the presentations then you will give to the Assembly and the Senate next legislative session, how many times will you have presented testimony on this bill?

CHARLES DUARTE:
Thank you, Madam Chair. I believe this is the fourth time I have given this presentation; the fourth time is a charm, hopefully, and we will see what happens after that.

CHAIR BUCKLEY:
Thank you, Mr. Duarte. Assemblyman Horne.

ASSEMBLYMAN HORNE:
Thank you, Madam Chair. I too have concerns on the sunset. It doesn't seem to make sense and particularly, your removing these drugs from the exclusion lists. People, then a year later, are going to be back—theoretically could be back on— if the next legislative body doesn't act, is that correct?

CHARLES DUARTE:
For the record, Charles Duarte. Yes, that is correct, Assemblyman Horne. Again, I think that in discussions with the stakeholders, with several Senators, there was concern about the effect of this and they wanted to make sure that reports were provided to the Legislature and there was opportunity for the Legislature to reconsider this bill.

ASSEMBLYMAN HORNE:
Couldn't there be language to have the next legislative body act to basically repeal it should the reports prove undesirable, as opposed to automatically having them have to keep it basically open? Just a thought….

CHAIR BUCKLEY:
Are there any other questions or comments on the measure? I don't see any; thank you very much for your testimony. Is there anyone else in the public who would like to provide testimony on Senate Bill 4? Seeing none, I will close the public hearing on Senate Bill 4 and bring it back to Committee.

Assemblyman Hardy moved to do pass Senate Bill No. 4.

Seconded by Assemblyman Conklin.
Motion carried.

On motion of Assemblyman Oceguera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 1:24 p.m.
Madam Speaker presiding.
Quorum present.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 1:25 p.m.

ASSEMBLY IN SESSION

At 1:42 p.m.
Madam Speaker presiding.
Quorum present.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee of the Whole, to which was referred Assembly Bill No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee of the Whole, to which was referred Senate Bill No. 4, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BARBARA E. BUCKLEY, *Chair*

GENERAL FILE AND THIRD READING

Assembly Bill No. 2.
Bill read third time.
The following amendment was proposed by the Committee of the Whole:
Amendment No. 8.

SUMMARY—Authorizes deviation from the required hours of operation for ~~[~~public~~]~~ **county** offices under certain circumstances. (BDR 23-14)

AN ACT relating to ~~[~~public offices;~~]~~ **counties;** authorizing deviation from the required hours of operation for ~~[~~public~~]~~ **county** offices ~~[~~if necessary because of a severe financial emergency;~~]~~ **under certain circumstances;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the establishment of required hours of operation for ~~[~~public~~]~~ **county** offices **.** ~~[~~of both state and local governments.~~]~~ (NRS 122.061, 245.040, 252.050 **)** ~~[~~, 281.110) Section 1 of this bill authorizes deviation from those required hours if the entity or officer in charge of an office of State Government determines in writing that the deviation is

~~necessary because of a severe financial emergency and submits a copy of the determination to the Legislature or Legislative Commission.]~~ **Sections 2-4** of this bill authorize deviation from those required hours for **[**~~offices of local government~~**]** **county offices** if the board of county commissioners **[**~~determines that~~**]** **approves the plan for** the deviation **[**~~is necessary because of a severe financial emergency.~~**]** **submitted by the office. The plan must be fiscally neutral or result in cost savings.**

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. **[**~~NRS 281.110 is hereby amended to read as follows:~~

~~281.110 1. *Except as otherwise provided in subsection 2:*~~

~~*(a)* Unless required for the efficient transaction of business and the convenience of the persons with whom business is transacted, the offices of all state officers, departments, boards, commissions and agencies must:~~

~~**[**(a)**]** *(1)* Maintain not less than a 40-hour workweek.~~

~~**[**(b)**]** *(2)* Be open for the transaction of business at least from 8 a.m. until 12 p.m. and from 1 p.m. until 5 p.m. every day of the year, with the exception of Saturdays, Sundays and legal holidays.~~

~~**[**2.**]** *(b)* Variable workweek scheduling may be required in those agencies where coverage is needed on Saturdays, Sundays and legal holidays or on other days or during other hours, as necessary.~~

~~**[**3.**]** *(c)* The offices of all state officers, departments, boards, commissions and agencies that are open on the days and during the hours set forth in *subparagraph (2) of* paragraph **[**(b) of subsection 1**]** *(a)* must remain open during the noon hour of each working day if any such office has more than one person on its staff.~~

~~***2. Any office of a state officer, department, board, commission or agency may deviate from the hours of operation required pursuant to this section if the entity responsible for the office determines in writing that the deviation is necessary because of a severe financial emergency and submits a copy of the determination to the Legislature, or the Legislative Commission if the Legislature is not in regular session.]*~~ **(Deleted by amendment.)**

Sec. 2. NRS 122.061 is hereby amended to read as follows:

122.061 1. In any county whose population is 100,000 or more, ***except as otherwise provided in subsection 3,*** the main office of the county clerk where marriage licenses may be issued must be open to the public for the purpose of issuing such licenses from 8 a.m. to 12 a.m. every day including holidays, and may remain open at other times. The board of county commissioners shall determine the hours during which a branch office of the county clerk where marriage licenses may be issued must remain open to the public.

2. In all other counties, the board of county commissioners shall determine the hours during which the offices where marriage licenses may be issued must remain open to the public.

3. Any office where marriage licenses may be issued may deviate from the hours of operation required pursuant to this section if the board of county commissioners ~~*[determines that]*~~ ***approves the plan for the deviation*** ~~*[is necessary because of a severe financial emergency.]*~~ ***submitted by the office. Such a plan must be fiscally neutral or result in cost savings.***

Sec. 3. NRS 245.040 is hereby amended to read as follows:

245.040 1. Sheriffs, county recorders and county auditors, county clerks, county assessors and county treasurers shall keep an office at the county seat of their county which, except as otherwise provided in ~~[~~subsection 3,~~]~~ ***subsections 3 and 4,*** must be kept open on all days except Sundays and nonjudicial days from 9 a.m. to 12 m., and on all days except Sundays, nonjudicial days and Saturdays from 1 p.m. to 5 p.m. for the transaction of public business, but nothing contained in this subsection interferes with a duty now required of a public officer under the election laws of this State. County clerks shall keep their offices open on all election days during the hours when the polls are open for voting but may, with the consent of the district judge of the county, close their offices for all purposes except election business and the issuance of marriage licenses on any day on which the primary or general election is held.

2. Notwithstanding the provisions of subsection 1, the board of county commissioners of any county may, by an order regularly made and entered in the records of its proceedings, designate the days and hours during which the offices of the sheriff, county recorder and county auditor, county clerk, county assessor and county treasurer must be kept open for the transaction of public business. An order so made and entered must require each office to be kept open for not less than 40 hours during each week, and must not prevent the county clerk from closing his or her office for all purposes except election business and the issuance of marriage licenses on primary and general election days as provided in subsection 1.

3. The board of county commissioners may authorize a county officer to rent, equip and operate, at public expense, one or more branch offices in the county. The branch office may be kept open for the transaction of public business on the days and during the hours specified in subsections 1 and 2 or on such days and during such hours as determined by the board. The provisions of this subsection do not preempt any other statutory provisions which require certain duties to be performed at the county seat.

4. ***Any county office may deviate from the hours of operation required pursuant to this section if the board of county commissioners*** ~~*[determines that]*~~ ***approves the plan for the deviation*** ~~*[is necessary because of a severe financial emergency,]*~~ ***submitted by the office, except that no such deviation may conflict with the election laws of this State. Such a plan must be fiscally neutral or result in cost savings.***

5. A county officer who violates the provisions of this section is guilty of a misdemeanor, and if an officer mentioned in subsection 1 absents himself or herself from office, except:

(a) When called away from his or her office by official duties;

(b) When expressly permitted so to do by the board of county commissioners or a majority of the members thereof in writing; or

(c) When he or she makes provision to leave his or her office open for the transaction of public business on the days and during the hours prescribed by this section and in charge of a deputy qualified to act in the county officer's absence,

➥ there must be withheld from the county officer's monthly salary that proportion thereof as the number of days of absence bears to the number of days of the month in which the absence occurs. The money must be withheld from payment of salary to the officer for the next succeeding month by order of the board of county commissioners, but such an order must not be made without first giving the officer affected reasonable notice and an opportunity to appear before the board and defend the charge against him or her.

Sec. 4. NRS 252.050 is hereby amended to read as follows:

252.050 1. In counties where, at the preceding general election, the total votes cast for the office of Representative in the Congress of the United States exceeded 2,500, ***except as otherwise provided in subsection 5,*** district attorneys shall keep an office at the county seat of their county, which must be kept open at least from 9 a.m. to 12 m. and 1 p.m. to 5 p.m. on all days except Saturdays, Sundays and nonjudicial days. Notwithstanding the provisions of this section, the board of county commissioners of any county may, by an order regularly made and entered in the record of its proceedings, extend the days and hours during which the office of the district attorney must be kept open for the transaction of public business. The board of county commissioners may authorize the district attorney to rent, equip and operate, at public expense, one or more branch offices in the county.

2. In counties in which the county seat is not the principal center of population, the county commissioners may authorize the district attorney to rent, equip and operate, at public expense, a branch office at the county's principal center of population. ~~[The]~~ ***Except as otherwise provided in subsection 5, the*** branch office must be kept open for the transaction of public business on the days and during the hours specified in subsection 1, but the requirements thereof do not apply to a district attorney when called away from the branch office by official duties.

3. ~~[Any]~~ ***Except as otherwise provided in subsection 5, any*** district attorney violating the provisions of subsection 1 or 2 is guilty of a misdemeanor. If any district attorney is absent from his or her office, except:

(a) When called away from his or her office by official duties;

(b) When expressly permitted so to do by the board of county commissioners or a majority of the members thereof in writing; or

(c) When the district attorney first makes provision to leave his or her office open for the transaction of public business on the days and during the hours prescribed in subsection 1 and in charge of a deputy qualified to act in his or her absence,

➥ there must be withheld from his or her monthly salary that proportion thereof as the number of days of the absence bears to the number of days of the month in which the absence occurs. This amount must be withheld from the salary of the district attorney for the next succeeding month by order of the board of county commissioners **,** ~~[,]~~ but no order in the premises may be made without first giving the district attorney reasonable notice and an opportunity to appear before the board and defend the charge against him or her.

4. Notwithstanding any other provision of ~~[this section,]~~ ***subsection 1, 2 or 3, except as otherwise provided in subsection 5,*** the district attorney in each county having a population of 700 or less, regardless of where the district attorney resides or where he or she keeps his or her office, shall:

(a) Attend all meetings, regular or special, of the board of county commissioners.

(b) Spend the hours from 9 a.m. to 5 p.m. of not less than 1 day each week at the county seat, and shall make himself or herself available to the county officers during those hours. The district attorney shall select the day of the week for his or her attendance at the county seat and shall thereafter spend that day each week at the county seat.

5. Any office of a district attorney may deviate from the hours of operation required pursuant to this section if the board of county commissioners ~~*[determines that]*~~ ***approves the plan for the deviation*** ~~*[is necessary because of a severe financial emergency.]*~~ ***submitted by the office. Such a plan must be fiscally neutral or result in cost savings.***

~~*Sec. 4.5.*~~ **On or before April 1, 2011, each board of county commissioners that has granted deviations from hours of operation pursuant to this act shall submit to the Director of the Legislative Counsel Bureau for transmittal to the 76th Session of the Nevada Legislature a report evaluating the deviations granted, which must include, without limitation:**

1. The number of offices in the county that were granted a deviation; and

2. Any cost savings resulting from the deviations.

Sec. 5. This act becomes effective upon passage and approval ~~[.]~~ **and expires by limitation on June 30, 2011.**

Assemblywoman Kirkpatrick moved the adoption of the amendment.

Amendment adopted.

Bill ordered to third reading.

Senate Bill No. 4.

Bill read third time.

Roll call on Senate Bill No. 4:
YEAS—41.
NAYS—None.
EXCUSED—Carpenter.
Senate Bill No. 4 having received a constitutional majority, Madam Speaker declared it passed.

Assemblyman Oceguera moved that all rules be suspended and that Senate Bill No. 4 be immediately transmitted to the Senate.

Motion carried.

Assembly Bill No. 2.

Bill read third time.

Roll call on Assembly Bill No. 2:
YEAS—41.
NAYS—None.
EXCUSED—Carpenter.
Assembly Bill No. 2 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Assemblyman Oceguera moved that all rules be suspended and that Assembly Bill No. 2 be immediately transmitted to the Senate.

Motion carried.

Madam Speaker moved that the Assembly recess until 4 p.m.

Motion carried.

Assembly in recess at 1:49 p.m.

ASSEMBLY IN SESSION

At 7:52 p.m.

Madam Speaker presiding.

Quorum present.

Assemblyman Oceguera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering issues regarding water rights, any budget bills that are delivered, and other matters.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 7:55 p.m.

Chair Buckley presiding.

Quorum present.

Issues regarding water rights considered.

CHAIR BUCKLEY:
Assemblywoman Kirkpatrick, do you have copies of a measure being distributed?

ASSEMBLYWOMAN KIRKPATRICK:
Thank you, Madam Chair. I do have copies on everybody's desks. This is a draft of what the Senate had talked about and also there is an amendment that will be proposed through the testimony. I wanted to make sure that everybody had a chance to look at it.

CHAIR BUCKLEY:

Thank you. Mr. Powers, thank you for appearing before us.

KEVIN POWERS, SENIOR DEPUTY LEGISLATIVE COUNSEL, LEGAL DIVISION, LEGISLATIVE COUNSEL BUREAU:

Thank you, Madam Chair. As you know, we are a nonpartisan bill drafting agency, and we are here to just provide legal advice with regard to the potential consequences and impacts of particular pieces of legislation. We do not urge or oppose any particular piece of legislation.

Ms. Kirkpatrick has handed out a draft of a BDR dealing with some issues relating to the decision of the Nevada Supreme Court recently on January 28, 2010, in the case of *Great Basin Water Network v. State Engineer*. I will refer to that as *Great Basin* or the *Great Basin* case.

To understand the *Great Basin* case, you just need a little background. In 1989, the Water Authority submitted some applications to appropriate water from the rural counties for a pipeline transfer project where the water would be transported to the Las Vegas metropolitan area. At the time, the statute said that the State Engineer had to act on those applications within a year. The State Engineer did not act within a year, nor did the applications fall to any of the exceptions of that one-year period. The applications then were in limbo for roughly 16 years, when the State Engineer then began proceedings on those applications again. At the time, some of the original protestants appeared at the prehearing conference and asked that the State Engineer renotice those 1989 applications and reopen the protest period so that those persons who had not had an opportunity to protest currently would have that opportunity, since 16 years had elapsed since those applications were first submitted to the State Engineer. That's the issue that went to the Nevada Supreme Court. They had to decide what the remedy was for the State Engineer's failure to act within that one-year period.

The Supreme Court determined that that issue needed to be remanded to the district court for determination of what the proper remedy was. The Supreme Court provided two options to the district court. The first option was for the district court to void the 1989 applications and require the Water Authority to refile new applications and proceed under the existing statutory framework. The consequence of that would be that the Water Authority would lose the priority of its 1989 filing date, and that would have an impact on the value of its water rights. Option number two: The district court could determine after the hearing to preserve the 1989 filing dates for those applications of the Water Authority but require the Water Authority to renotice the applications and reopen the protest period so current individuals who were affected by the application would have an opportunity to have that protest heard by the State Engineer. The case has not gone back to the district court yet. The Water Authority has filed a petition for rehearing, and the Supreme Court will be considering that petition for rehearing. As long as the application is pending before the Supreme Court, the case will not be returned to the district court.

With that background in mind, we turn to the two BDRs that have been discussed this session dealing with this issue. Last night in the Senate, a BDR was introduced that was requested by the Administration. That BDR essentially was choosing a third remedy to offer and that essentially the Legislature, by enacting the bill, would be creating a third statutory remedy that the district court would have to consider and most likely have to follow because it was chosen by statute. In particular, that third remedy would be to preserve the priority of those 1989 applications, but only require a limited renoticing and a limited reopening of the protest period. The only persons who would be eligible to file a protest during that limited reopening period would be successors in interest to original protestants or original affected water rights owners, and those would be the individuals who protested in 1989 or whose water rights were affected in 1989. So that legislation was heard in the Senate last night. They did not take a vote on whether or not to proceed with that BDR. The Senate did request that we draft an additional BDR dealing with the issue. Essentially what the Senate asked for—and what you have before you—is to draft a BDR where the statutory remedy would be option number two that the Supreme Court put before the district court. Option number two, again, was preserve the priority of those 1989 applications of the Water Authority, but require a full renoticing and a full reopening of that protest period allowing existing people who are affected by these applications to file a protest and have their rights be heard. The remedy doesn't result—the remedy doesn't

produce a result; it just reopens the period for a protest. The State Engineer would still have to make the determination based on the information and evidence presented whether or not to grant or deny those applications.

In addition, this BDR does one other thing. If you look in section two, there was a question that arose that if the State Engineer did not act within the year period but granted the application after that—say within the second year or the third year—what was the status of that application. There was a fear that if the State Engineer was required to act within that year period, as the Supreme Court held, and he did not act, that any action he took on the applications after that year period could be declared void or at least would be subject to uncertainty. So section 2 of this proposed BDR would provide that if you filed your application with the Office of the State Engineer and the State Engineer did not act on the application within that one-year period, but did approve that application thereafter, that that approval is still valid and can't be challenged because of the Supreme Court's decision.

So that is a general overview of the legislation and the history of this issue, and I am certainly open to any questions.

CHAIR BUCKLEY:
Questions of the committee? Assemblyman Goicoechea.

ASSEMBLYMAN GOICOECHEA:
Thank you, Madam Chair. I guess the one that really strikes out to me is section 1, sub 3, the very last line when it says "but they are not intended to change." Is there not a way we can word that a little stronger, "they cannot change"? I mean, clearly, that's the intent. We don't want to change the priority dates with any of the actions we take, and I guess I get a little bit nervous when I look at the language. It said that it's "not intended to," but to me, that points out it could.

KEVIN POWERS:
Thank you, Madam Chair. As a matter of drafting, I think the result is the same, but if this body prefers that the sentence say "but they do not change, alter, modify, or abrogate the priority of any application" then we could change the "they are not intended" to "do not," and that would, to me, equate to the same result.

ASSEMBLYMAN GOICOECHEA:
Thank you. I would feel a lot more comfortable with that—I don't know about the rest of the body—because technically, that is the meat of what this does—is that we want to really establish that the priority dates can't change. Thank you.

CHAIR BUCKLEY:
Thank you, Mr. Goicoechea. Other questions of the committee? Assemblywoman Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you, Madam Chair. I just want to clarify with Mr. Powers. So section 2—because it's important that people that got their stuff in say 1960, 1950, that they would be protected under this part. Is that correct?

KEVIN POWERS:
Thank you, Madam Chair. That is correct. They would be protected under this part. Again, if the State Engineer failed to act on the application within one year when it was filed but approved it thereafter, this section would ensure that that approval remains valid and cannot be challenged.

ASSEMBLYWOMAN KIRKPATRICK:
May I follow up, Madam Chair?

CHAIR BUCKLEY
Yes.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you. And I think that's important because I don't think anybody—well, at least I don't believe that it's fair to go back and penalize them because the State Engineer's office was behind. Subsection 3, though, I just want to be clear. I know that I passed out a copy of my bill, and it has chicken scratch on it, and I apologize. But I underlined a section, "The provisions of this subsection are intended to require the State Engineer to renotice." Can you just talk a little bit about that sentence and the interested persons so that we're clear on the protest part?

KEVIN POWERS:
Thank you, Madam Chair. Under current statute, when someone first files their application for the water rights appropriation, there is a period in which the State Engineer provides publication—and that's the notice of the application—and also sends out a certified mail notice to certain particular affected property owners. Then there is a period for those interested persons who would be affected by that application to file written protests with the State Engineer, and then after those written protests, the State Engineer would make his determination. Because in 1989 none of that occurred in the first year period, there are many persons who were original protestants then who no longer live in the area, who are no longer affected by these decisions, but there are many new people who live in the area that would be affected by these decisions who weren't original protestants and didn't have that opportunity to file a protest. What this would do is renotice the applications, open up the publication period again, require the additional certified mail notice, and reopen the protest period and allow those current people who would be affected by these decisions to file their written comments with the State Engineer and to therefore protest and object to these particular applications.

ASSEMBLYWOMAN KIRKPATRICK:
And one last thing. Because I think water is a complicated issue and it takes a long time to get it, I just want to make sure we're clear with some of this, so I apologize for that. But those are on applications that haven't already been decided, correct?

KEVIN POWERS:
That is correct.

CHAIR BUCKLEY:
Assemblyman Carpenter.

ASSEMBLYMAN CARPENTER:
Thank you, Madam Speaker. In the statutes now, if I want to comment on some of these applications, which "interested persons"—is that in the statute now? Does it define what "interested persons" are? I went to some of those hearings, and it seemed to me like there was a lot of testimony and everything where people wanted to, you know, have it reopened. Is there a definition of what "interested persons" are?

KEVIN POWERS:
Thank you, Madam Chair. The State Engineer, if he has an opportunity to testify, may be able to elaborate on this further. The statute, NRS 533.365, provides that any person interested may, within 30 days after the date of the last publication of the notice of the application, file with the State Engineer a written protest against the granting of the application setting forth with reasonable certainty the grounds of such protest, which must be verified by the affidavit of the protestant or an agent or attorney thereof. So again, the standard is an interested person, and I think the State Engineer could probably give you further elaboration of how he interprets that statute. But I would think you would have to establish some impact that would make you an interested person.

CHAIR BUCKLEY:
Assemblyman Goicoechea.

ASSEMBLYMAN GOICOECHEA:
To the maker of the bill, we've got a second sheet. Are we supposed to be questioning that or is that an amendment that will come later?

CHAIR BUCKLEY:
Assemblywoman Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you, Madam Chair. That is an amendment that I believe is going to be proposed shortly, but I do think that our legal counsel should elaborate on it but probably after we hear from the proponent on what it does.

CHAIR BUCKLEY:
Okay. Assemblyman Anderson.

ASSEMBLYMAN ANDERSON:
Thank you, Madam Chair. In light of my colleague from Elko County's question, if the State Engineer has already made a determination relative to—and held a hearing—we're not giving a group a second opportunity to come back and hold—or requiring the State Engineer to come and renotice for a second set of hearings and notifications are we, with this? If that's already done and what we're doing is saying everything you did is okay, he's given a second bite at the apple.

KEVIN POWERS:
Thank you, Madam Chair. I want to refer back to the language in the bill. On page 2 of the BDR draft, subsection 3 sets up the conditions that will cause that subsection to be applicable. An application has to have been filed with the Office of the State Engineer before July 1, 2003. The State Engineer has to have failed to act upon that application within one year after the final date of the filing of the protest, and the State Engineer has to have failed to have approved or rejected the application before July 1, 2003. So if these things exist, then this particular section of the law would apply. And I just want to elaborate a little further on the July 1, 2003, date that is in there. In 2003, the Legislature passed legislation that made changes to the application process and provided that that legislation would apply to pending applications. When the State Engineer failed to rule on the Water Authority's applications in 1989 within the one-year period, the status of those applications became in doubt. Were they still pending? Were they dead? There was no statutory consequence for the State Engineer not acting within the one year, so there was a question as to what the true status or term would apply to those applications. When the Legislature enacted that legislation in 2003 and said it would apply to pending applications, that is one of the issues the Nevada Supreme Court had to determine—whether that term "pending" applied to just those applications that had been filed within that year and therefore were still within the one-year period, or did "pending" mean all applications that had been filed in the past in which the State Engineer did not act on within a year.

In order to determine whether it went back that far, the Supreme Court looked at the legislative history and tried to find the Legislature's intent. As a general rule of statutory construction, statutes are construed to be prospective in operation unless there is a clear and unmistakable intent of legislative desire to make the law retrospective. In this case, the Supreme Court didn't find that clear and unmistakable intent for retrospective application, and therefore they concluded that the 2003 legislation did not apply to those 1989 applications. What this bill will do is clarify the Legislature's intent and say yes, that 2003 legislation was intended to apply to those 1989 applications. But in accordance with what the Supreme Court said in its case, the Legislature by statute is saying the remedy is not to void the applications and lose the priority; the remedy is to preserve the priorities of those 1989 applications, but require renotice and a reopening of the protest period. So again, we go back to this language and we establish what type of applications the Legislature is referring to, and that's one that was filed before the effective date of the 2003 legislation, one where the State Engineer failed to act on it within a year, and one in which the State Engineer never approved or rejected it before the effective date of the 2003 legislation, so those are the applications that will be affected by this portion of the BDR.

CHAIR BUCKLEY:

I have not spent any time on Government Affairs or significant time on water issues in my tenure at the Legislature, but let me try to just summarize in four sentences the issues before us and see if you agree or not, so we're all just really clear.

The state water engineer was supposed to process the cases in a year and didn't, so the question becomes when applications are just pending for a very long time, what individuals' rights are. The Supreme Court said, with regard to these cases, that there is no remedy in the statute, so there are two choices that are available to comply with due process of law. One result upon remand would be everybody loses their priority and then if someone else has filed, they get priority. Or two, you keep your priority but you have to renotice and let everyone who wants to who is now affected file a protest. The bill that was in the Senate said something else—the original bill pending. It said you would keep your priority, but you didn't have to open up a new protest period, and you could limit the people who could file a protest to the people who had an interest or were related to that interest back when the application was filed. That bill was rejected by the Senate as being too restrictive, because what if you have someone now who has property next to a water rights and wants to have their voice heard. Unless they lived there in 1989, they could not do that. So what this version does is says you keep your priority and you're not hurt by the water engineer's failure to act within the year period, but you have to begin again at that time renoticing and allow anyone affected to file a protest. That probably wasn't four sentences, but is that a fair summary of the issue before us?

KEVIN POWERS:

That is correct, Madam Chair, and you did do it in fewer sentences than I did.

CHAIR BUCKLEY:

Assemblyman Goicoechea.

ASSEMBLYMAN GOICOECHEA:

Thank you, Madam Chair. I've got another question, then. We saw a lot of hype over the last 30 days—or since January 28, I believe is when the Supreme Court ruling came out—and we've heard this number 14,000, 14,500 applications, permits, or certificates that were also jeopardized by this Supreme Court ruling. But what I'm hearing you say is if an action was taken and finalized on that—in your opinion in interpreting the Supreme Court decision or ruling—that those aren't in jeopardy. Is that what I heard you say?

KEVIN POWERS:

Thank you, Madam Chair. That's one of the purposes of the BDR is that section 2 of this BDR would be to ensure that those prior approved applications before July 1, 2003, are not affected by the Supreme Court's decision. The Supreme Court's decision itself does not decide that issue; it leaves it open and remands the issue back to the district court. And what the district court will do one way or the other could have an impact on those applications.

ASSEMBLYMAN GOICOECHEA:

Follow up if I may, Madam Chair. Then you believe that the district court could, in fact, provide an interpretation that would jeopardize those applications, permits, or certificates.

KEVIN POWERS:

Thank you, Madam Chair. That is correct. There is a possibility that the district court's decision could jeopardize holders of existing water rights.

ASSEMBLYMAN GOICOECHEA:

Thank you, sir.

CHAIR BUCKLEY:

Assemblywoman Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. But I want to be clear. I understood you to tell me earlier that if we did nothing and the Supreme Court made a decision, we could not go back and change that; is that correct? Or could you elaborate on that?

KEVIN POWERS:

Thank you, Madam Chair. If the Legislature does not enact this legislation, most likely the case will be remanded to the district court to determine the remedy. Once the district court determines the remedy and adjudicates specific rights between specific parties, that adjudication can't be upset by the Legislature by subsequent legislation because those become vested rights adjudicated for those parties. Now, the Supreme Court will probably get an appeal from that district court decision, and then what the Supreme Court decides based on the appeal will become the law of the state with regard to that particular issue. So that would be the consequences. You would essentially be leaving the determination of this issue to the judiciary.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. So I just—in reality, though—I mean, I'm no attorney—but what is the time frame that all of this takes to go through, do you think, our best guess? I mean, could they do it tomorrow or could it take two years?

KEVIN POWERS:

Thank you, Madam Chair. Any court can act as quickly as it wants, so it is certainly possible for the Supreme Court to rule quickly on the petition for a rehearing, and if they remand, then it certainly is possible for the district court to expedite the process and rule quickly. But even at the district court level, the district court has to hold evidentiary hearings, and the parties have to have an opportunity to prepare for those evidentiary hearings, so even if the district court acts quickly, I would think at the district court level would still require several months to decide. Then the possible appeal would follow. If they followed the ordinary appeal route and the Supreme Court didn't expedite the appeal, the appeal process can last anywhere from one to three years; expedited, you could probably do it in under a year because I have been part of cases where the Supreme Court expedited it, and it was decided in less than a year. It all depends on how the Court wants to address the issue and whether it sees a need to expedite, so anywhere from a year to three-year period probably.

CHAIR BUCKLEY:

Assemblyman Goicoechea.

ASSEMBLYMAN GOICOECHEA:

Thank you, Madam Chair. I am opposed to trying to legislate a remedy to this in face of the Supreme Court decision, so my remarks will be a little bit slanted. But the bottom line here: It would be the perception to me that these attempts—and if we do act and pass on this bill—are somewhat an admission of guilt or at least admission to the Supreme Court that we think there is something wrong with it and we tried to fix it. I have talked to a lot of legal counsels, and most of them—especially those applications, permits, or certificates that have been dealt with from 1947 ahead—did have their due process served on them. I mean, they were advertised, hearings were held in the event of a protest, and ultimately proof of beneficial use was established, and those water rights are in place. Therefore most legal counsel that I've talked to said they're not in jeopardy because clearly, the due process was served on them. I think there are a number that were, i.e., being protested or new applications pre-'03 that probably fall in this litigation, but clearly, I really don't believe it is the 14,000, and by your remarks there, it sounds like maybe we'd be a lot better off taking this up in a regular session when we have a lot more time.

KEVIN POWERS:

Thank you, Madam Chair. As to the first part of your question, in its opinion, the Supreme Court said that in the absence of a statutory remedy, it was remanding the case to the district court to determine the proper remedy. Essentially, the Supreme Court was saying unless the Legislature was to provide a statutory remedy, the district court has to determine what that remedy is. So I believe the Supreme Court left open the possibility for this body to determine a statutory remedy and therefore guide the judiciary in how it resolved that case. This legislation also tried to take into account the two options that the Supreme Court was sending back to the district court. The Supreme Court would not remand the matter to the district court and tell the district court to select between two remedies if either of those remedies violated due process or interfered somehow with the separation of powers. So this legislation, by choosing as the

statutory remedy one of the remedies offered by the Supreme Court, would essentially be performing the function that the Supreme Court was suggesting—providing the statutory remedy—and doing it in a way that comports with due process. I believe that would be my answer to the first part of your question.

The second part of your question as to how many applications the Supreme Court decision may or may not affect—I think the district court decision on remand would factor into that, and there is a difference of opinion on that. I don't think it is clear one way or the other. What will happen, though, is that each of the water rights may be subject to litigation on each of those individual water rights. It won't be done *en masse* like a legislation that creates a statutory remedy and determines the issue; it is going to be decided on a case-by-case basis.

CHAIR BUCKLEY:

Assemblyman Goicoechea, just a comment. I was very skeptical of this legislation as introduced in the Senate. It seemed to be trying to circumvent the court decision, and I've seen over the years, sometimes, legislation introduced to do that, sometimes in a very heavy-handed manner, and that concerned me. I'm also concerned about how little time we have to examine it and all the unintended consequences, but one of the things that began to change my thinking and to consider allowing this hearing to happen was the fact that I don't think it is fair for people to lose their priority because the water engineer didn't do his or her job. That is just wrong. On the other hand, if the application has been pending for 20 years, it doesn't seem fair to not let people currently affected voice their concerns. So the idea of making sure people don't lose their priority, but letting whoever wishes to comment, comment seemed to me to be an approach at least worth considering. And I guess, to be perfectly frank, we'll hear from all the witnesses. If we can't consider this matter thoroughly in three and a half hours and have people feel comfortable, I would suggest another alternative would be to ask the Legislative Commission to form a subcommittee, have hearings, put a fair group together, hear it for a couple weeks, and if there is consensus reached, then request that the Governor call a one-hour special session. I don't think we should rush and make a mistake, but on the other hand, I'm now convinced that allowing people to lose their priority for the water engineer is just a bad precedent and a bad result.

I also think this body needs to thoroughly examine the water engineer's office. We talked yesterday about increasing the fees charged by the water engineer, and that kind of went by the wayside because of concerns with setting fees. But, you know, let's be real here. If we don't support the office by fees and have it function and process applications in time, we have chaos, and that's what we have here. I really commend my colleague, the chair of Government Affairs, and you last session, for the first time setting up fees for the water engineer and had support on the other side. That was a great first step. I think we need to do more of it and staff this office. If this isn't a clear example of what happens when you don't properly fund and watch an office, I don't really know what is.

In any event, I just wanted to share that perspective. I don't know how much time we're going to have between bills, but I think this conversation is great. Let's see where the conversation goes, let's see what the witnesses say, and see where we end up.

ASSEMBLYMAN GOICOECHEA:

Thank you, Madam Chair. I agree with you. The priority of these applications or permits or certificates has to be maintained. There's no doubt about it. That's why I wanted to make sure that language was as strong as possible. But I would also concur we brought this bill forward at a very late hour on a day when we're all hustling. I do believe that there are a lot of people across this state that would like to comment one way or another, and although my colleagues that sit on the Legislative Commission—I don't want to bode them any ill will—but I would like to see them hear this for a little bit, at least give the public or somebody the opportunity to voice their concerns, and I think it's appropriate. Thank you, Madam Chair.

CHAIR BUCKLEY:

Well, let's do this. Let's see if there are any more legal questions for Kevin, call a couple witnesses. If folks want to discuss it more first, that's fine, too; whatever the pleasure of the body.

Assemblyman Bobzien.

ASSEMBLYMAN BOBZIEN:
Thank you, Madam Chair. Kevin, knowing that we're going to be hearing some concerns about the language and different scenarios that are in, that are out, and that there's been some discussion about amending this language a little bit to kind of take care of some of those concerns—you made a comment earlier about the due process test that's in play here and the fact that by recommending the second remand option, we're staying consistent with the imperative to stick with due process. Is there a concern that if we start adjusting this language one way or the other, that we start to drift away from the due process strength of the proposal? In other words, do we start getting into constitutionally suspect territory if we start changing this too much? Could you comment or respond to that?

KEVIN POWERS:
Thank you, Madam Chair. And I do believe that is a legitimate concern. Oftentimes when a supreme court remands a case to a lower court, it remands the case with instructions to determine the proper remedy without specifying what the possible proper remedies are. I think because of the due process concerns and the separation of power concerns that are involved in retroactive legislation, the Supreme Court narrowed it for the district court down to two remedies that would offer the proper due process and would not violate separation of powers, and therefore I do believe that if you move outside of those two remedies, you raise the possibility of making it more constitutionally suspect.

CHAIR BUCKLEY:
Can you say that again? If we choose an option other than the two suggested by the court, that it is constitutionally suspect?

KEVIN POWERS:
I think it just increases the possibility of it being constitutionally suspect. Again, the Supreme Court instructed the district court to choose between two alternative remedies, and each of those alternative remedies most likely complies with due process because I don't think the Supreme Court would have suggested remedies that don't comply with due process. So we know those two remedies most likely comply with due process. Any other remedies you choose outside of those two just increases the uncertainty as to whether you're complying with due process.

CHAIR BUCKLEY:
Okay. Assemblyman Settelmeyer.

ASSEMBLYMAN SETTELMEYER:
Thank you, Madam Speaker. I appreciate all the comments about water rights and the discussion thereof, and as a little bit of a story about how long water rights cases can last, my family had the longest running court battle, which was 58 years, in American history. Also, I will be abstaining from this under Assembly Standing Rule No. 23 for I have water rights that are within this affected area and will not be voting on any bill or amendment on this subject.

CHAIR BUCKLEY:
Thank you, Mr. Settelmeyer. Assemblywoman Spiegel.

ASSEMBLYWOMAN SPIEGEL:
Thank you, Madam Chair. Kevin, I was wondering if you could speak for a minute or two about some of the potential implications, particularly economic implications, of the two options that were put forth in the Supreme Court's decision.

KEVIN POWERS:
Thank you, Madam Chair. Option number one voids the applications filed in 1989 and thereby the Water Authority loses its 1989 priorities. Water rights are a form of personal property, and they have worth based on their priority—first in time, first in right. The earlier your priority is, the more your water right is worth, so there is an impact on the value of those water rights. In addition, if the Water Authority has to file new applications and doesn't have

that priority, they may not be able to get the amount of water they initially thought because all of the other applications filed from 1989 to now would have a higher priority and there will be a less amount of unappropriated water for the Water Authority. So that could have an economic impact because that could reduce the water resources available to the Water Authority and make the water resources available in the Las Vegas metropolitan area less reliable and less predictable, and that could have an impact on construction and development.

The second option in which the 1989 priorities are maintained, you'll remove those issues and require renotice and reopening. The burden there would be one on the State Engineer and the Water Authority to absorb the cost of providing new proceedings: notice, hearing, time and effort, and staff resources involved. So there will be an impact there. Keep in mind that that cost in option number two will also be an additional cost in option number one. When you require the Water Authority to file new applications under option number one, you're going to renotice and reopen the protest period because you're going to start from scratch. So whether under option number one or option number two, the due process component of notice and opportunity to rehearing will be a fixed cost for both of those options. The only difference is the economic impact from losing the priority of 1989 applications under option number one.

ASSEMBLYWOMAN SPIEGEL:
Madam Chair, may I ask a follow-up?

CHAIR BUCKLEY:
Yes, you can.

ASSEMBLYWOMAN SPIEGEL:
Now, is there also an impact that could be felt based on the time frames that it could take for the district court to make a decision if we fail to take some action?

KEVIN POWERS:
Thank you, Madam Chair. I think the first impact—and it probably will have some economic impact—is the uncertainty. As was discussed earlier, the ultimate legal impact can't be decided until the district court determines the remedy and then that decision gets appealed to the Supreme Court and the Supreme Court determines whether the district court was correct in choosing that remedy. So you do, again, have potentially a one- to three-year period of uncertainty, and so that will create, again, the issue of whether or not the Water Authority will be able to have enough water resources in the future to meet the needs of development in the Las Vegas metropolitan area.

ASSEMBLYWOMAN SPIEGEL:
Okay, thank you.

CHAIR BUCKLEY:
Thank you, Assemblywoman Spiegel. Assemblyman Carpenter.

ASSEMBLYMAN CARPENTER:
Thank you, Madam Chair. Have some people filed some water rights applications after this ruling in order to maybe get an earlier priority than they would have had otherwise? Have there been any situations like that where they've tried to, I guess, take someone's water right by filing an application and getting an earlier priority, do you know?

KEVIN POWERS:
Thank you, Madam Chair. There has been, as I understand it, people rushing to file again, and the reason for that is the uncertainty over what their existing water rights have as a legal status. Again, if the Supreme Court's decision and the remedy chosen by the district court means that any application in which the State Engineer didn't act within a year period is void, then a lot of those priorly approved applications would be void, and in order to secure those water rights again, you'd have to file a new application. So out of prudence and an abundance of caution, I would think many water rights holders would want to file their applications as soon as possible so that if they lose their prior water right, then they're back in the game now with as early a priority as possible.

CHAIR BUCKLEY:

Okay. I really want to get the water engineer up. I'll call Mr. Powers back up after we hear from a couple people unless the budget bill arrives, and then you're getting bumped.

Thank you, Mr. Powers, and don't leave yet unless the Senate calls you.

ALLAN BIAGGI, DIRECTOR, STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES:

Good evening, Madam Chairman. My name is Allen Biaggi, and I'm the director of the Nevada Department of Conservation and Natural Resources. With me this evening is Jason King, who is the acting State Engineer. Obviously, this is an Administration bill. I felt it was very important to bring this bill forward because, as we have heard, this has the potential to impact as many as 14,500 applications of water rights, some of those existing and some of those currently active serving water to communities, to agriculture, and to industry in the state of Nevada.

This potential issue that has been brought up by the Supreme Court has been long recognized within the state of Nevada as being a problem. And let me just read to you a summary that then-State Engineer Hugh Richie wrote in 2002 with regard to the Garnet Valley decision. In that ruling he stated, "The 1-year statutory time frame is a statutory relic left from a much simpler time when processing water right applications was considerably different than what is presented to the State Engineer today." The population of the state in 1947 was less than 100,000 people until the 1950s. "Between 1905 and 1950, a little over 13,000 water right applications had been filed, averaging about 288 applications per year. Between 1950 and 1979, about 27,000 water rights applications were filed, averaging about 931 applications per year. Between 1980 and the present"—which this was in 2002—"an additional 28,900 water right applications were filed averaging about 1,313 applications per year." The ruling goes on to state that approximately 25 percent of the active permitted and certificated water rights that exist in Nevada today would be affected if a court were to determine they were void because they had not been acted upon within the one-year statutory time frame. The havoc of such a determination would be unimaginable. I would also like to point out that oftentimes it is not the State Engineer that requests the delay. Very frequently, protestants ask for the delay in order to do studies, in order to do further evaluations of the hydrologic regime. So it's not only the activities of the State Engineer that cause delays; oftentimes it is the protestants as well.

So with that said, last night—even later than tonight—we testified on behalf of this bill, and some grave concerns were brought up. Today we've been working very hard with all of the parties that are involved in this to craft some alternative language. The intent of this language is to address the due process issues that were raised by the Supreme Court associated with an interbasin groundwater transfer. What this language does before you is three important things, and I believe the chairwoman very adequately described them, but let me just go over them one more time. What this bill does is for all applications for interbasin transfers of groundwater that were pending on July 1, 2003, those will have their protest periods reopened. That includes the Southern Nevada Water Authority applications. In addition, this language will require all of those interbasin groundwater transfers that have been permitted but under appeal to also have the protest periods reopened. Finally, this language preserves the status of all water rights that took longer than one year to act upon and are currently active.

There are some potential unintended consequences to this language. We've done some very quick research today, and this has the potential to open some groundwater interbasin transfers in certain areas of the state. That would include Churchill County, Elko County, Nye County, some Aquatrac proposals in Washoe County, Jassick water rights also, I believe, in Washoe County, and some of the Virgin Valley Water applications. With that said, we are supportive of the language. We think it is a reasonable fix for now.

We do have two small modifications to the language you have before you. The first would occur in sub 3 in the first line. We would add the words "for a groundwater interbasin transfer" on the first line so that it would read "Except as otherwise provided in this subsection, each application for a groundwater interbasin transfer described in" and then continuing on with that line. What that language does—

CHAIR BUCKLEY:
I'm sorry. I'm writing a little slow tonight. What was it? "For a groundwater"?

ALAN BIAGGI:
"Interbasin transfer."

CHAIR BUCKLEY:
Thank you.

ALAN BIAGGI:
What that does is it references that this is not for surface water; it is for groundwater only.

Further down on line 4, it states "filing a protest and thereafter did not approve or reject the application." We would suggest that that reads "filing a protest and thereafter did not approve," omit the word "or," "reject," and add the words "or a study was requested" and then continue with that line. What that does is it makes it consistent with other statutory language.

CHAIR BUCKLEY:
Did you say "and thereafter would not approve, reject, or a study was requested"?

ALAN BIAGGI:
Madam Chairman, I'll read the line as amended: "filing a protest and thereafter did not approve, reject, or a study was requested, the application before July 1."

CHAIR BUCKLEY:
I'm sorry; I had trouble hearing you. "Approve, reject,"—

ALAN BIAGGI:
—"or a study was requested."

CHAIR BUCKLEY:
Okay, that's what I thought you said.

ALAN BIAGGI:
Finally, Carl Savely, who is a—

CHAIR BUCKLEY:
Does that make sense to anybody? No. Let's talk about that for a second. "If the State Engineer did not act upon the application within one year after the final date for filing a protest and thereafter did not approve, reject, or a study was requested." "Did not approve, reject, or approve a study to be conducted"? What's your point here?

ALAN BIAGGI:
Madam Chairman, the language, the way you stated it, is the intent.

CHAIR BUCKLEY:
Okay.

ALAN BIAGGI:
So it's a matter of—

CHAIR BUCKLEY:
Wordsmithing.

ALAN BIAGGI:
—elegance of the language, I suppose. I like the way you worded it.

CHAIR BUCKLEY:
Okay, you can keep going.

ALAN BIAGGI:
Finally, there is some language that I believe you have before you which was proposed by Carl Savely, who is a water rights attorney in the state of Nevada. What that would do is that

those groundwater transfers that were permitted after 2003 and that are not under appeal will not be reopened. We believe that is an important consideration. Finally—

CHAIR BUCKLEY:
Can you elaborate on that a little bit more? What's the import of that? So they're already granted or—

JASON KING, ACTING STATE ENGINEER, DIVISION OF WATER RESOURCES, STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES:
Madam Chair and members of the Assembly, again, for the record, my name is Jason King, acting State Engineer. What that language is attempting to do is since 2003, there may have been some interbasin groundwater transfers that were pending as of July 1, 2003, but have since been permitted, the idea being that if they have—if those permits are finalized—in other words, if they're no longer under appeal, those specific permits would not be reopened to the protest period.

CHAIR BUCKLEY:
So they've already been granted, but they might have been pending for more than a year? Is that what Mr. Powers was talking about earlier?

JASON KING:
That's correct. They are to exclude those that were pending but have since been permitted but are no longer under appeal. It would preserve the status of those rights whereas, as an example, in the Spring Valley applications that were pending July 1, 2003, we have also permitted those, but those are under appeal, and therefore they would be open to a new protest period.

CHAIR BUCKLEY:
Okay, we have some questions. Assemblyman Horne.

ASSEMBLYMAN HORNE:
He answered it, Madam Chair.

CHAIR BUCKLEY:
Okay, thank you. Assemblyman Mortenson.

ASSEMBLYMAN MORTENSON:
Thank you, Madam Chair. Interbasin transfers versus intrabasin transfers. I keep hearing you talking about interbasin transfers. Are there many intrabasin transfers affected by the judgment of the Court?

ALAN BIAGGI:
Madam Chair, to Assemblyman Mortenson. Assemblyman, as you know, there are 255 groundwater basins within the state of Nevada. An intrabasin transfer would be just the movement of water around with inside that basin. That's what we do in the state of Nevada all the time; that's just movement of groundwater from one part of a basin to another for irrigation purposes, drinking water. The interbasin transfers are from one basin to another, either adjacent basins or from quite some distance away. For surface water and for groundwater, that's sort of been a way of life in the state of Nevada. The very first interbasin transfer occurred in Virginia City, actually from the Lake Tahoe Basin to Virginia City to supply to the—

ASSEMBLYMAN MORTENSON:
Let me interrupt. I understand all that. What I'm asking is are there cases where people have asked—I'll just tell you. Right now, I'm applying for a water transfer. Are transfers within a basin—have they been ignored, and are they part of the contention that the Court has addressed?

ALAN BIAGGI:
Madam Chair, Assemblyman Mortenson. We believe that the Supreme Court ruling, while it was specific to groundwater interbasin transfers, did open the possibility, in the worst case scenario, for all kinds of issues with regards to groundwater and surface water within the state of

Nevada. What our original bill did and what these modifications do is to solidify those existing water rights and state very clearly and succinctly that if they were approved previously by the State Engineer, they are going to be active for the future.

ASSEMBLYMAN MORTENSON:
Then, also, you were talking about pending, but not under appeal, would not be addressed or would be considered defunct, I guess. Will you at least send out letters to people who may not have reappealed but are waiting for action by the State Engineer? I'm sure there are people in that situation. Will they get a notice saying that they're going to be ignored if they are not appealing?

JASON KING:
Madam Chair to Assemblyman Mortenson. If I understand your question, it is specific to those interbasin transfers that were pending July 1, 2003, but have since been acted upon. Is that correct?

ASSEMBLYMAN MORTENSON:
Have not been acted on.

JASON KING:
Have not been acted on?

ASSEMBLYMAN MORTENSON:
The ones that were—yeah, the ones that have not been acted on. As I understood what you said is that if they have not appealed them, then you will not consider them, or you will ignore them. I'm just saying will you at least send letters out to people who have applied, but have not been acted upon by the State Engineer, and tell them that they must appeal if they want action?

JASON KING:
What I believe will occur for those that have not been acted upon is they will be advertised again. That advertisement will be opened up again, and it would be the responsibility of anybody out there looking at the applications. The way I understand the way the bill reads, it will be the responsibility of the protestant to see such an application and file that protest.

ASSEMBLYMAN MORTENSON:
I think a letter would be more appropriate, but that's okay.

CHAIR BUCKLEY:
Did you have more testimony, or did you want me to keep going with questions?

ALAN BIAGGI:
Madam Chair, I just wanted to address Assemblyman Carpenter's question with regard to "interested person" and the scope of that. Assemblyman Carpenter, an "interested person" is very broad in this context. It could be anyone who wishes to file a protest and files the appropriate fees. We have had people from the East Coast file protests, who I'm not sure they even knew where Nevada was, but they have filed, so it's a very broad statutory provision.
That concludes my testimony.

CHAIR BUCKLEY:
Okay. Assemblywoman Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you, Madam Chair. I want to clarify a couple of things. The amendment that everybody has on their desks is the amendment that you were talking about, correct, from the water lawyer, so that that's clear?

ALAN BIAGGI:
That is correct.

ASSEMBLYWOMAN KIRKPATRICK:

And then the other thing is to address Mr. Carpenter's concern. We have talked about that, though, at least the last two sessions in Government Affairs about folks being able to file protests from other parts. In fact, Mr. Goedhart testifies a lot to it in Government Affairs on how it happens, so it's not something that we haven't heard before; it's not an issue that we haven't tried to fix.

So let me ask this: With the proposed draft language of the BDR—because that's all it is, is a proposed draft language—with that you said that there are some affected parties. Does this amendment help that or not? And then I have a couple of questions, if that's okay.

JASON KING:

Ms. Kirkpatrick, yes, the amendment does—I mean, it adds value to the bill because without that amendment, again, those interbasin transfers that have since been permitted and have been finalized, aren't under appeal, would now all of the sudden open them up. So these large interbasin groundwater projects would be in limbo again, whereas, you take those out of the picture, and you're really looking at the ones that have not gone to hearing, we have not acted upon them, so we're still kind of in this pending status, and they would just be reopened again to the public. So yes, there is definitely value added to that amendment.

ASSEMBLYWOMAN KIRKPATRICK:

I'm sorry to belabor this, but contrary to what people believe, water is a very dry situation, but if you don't talk about it and get stuff on the record, it's even more confusing. What I don't want to do is fix one big problem and create five hundred smaller problems. The one thing I've learned in Government Affairs is the northern Nevada water system is very, very unique. The Truckee River has its own little issues, then we have the stuff that we've been working on for years, the local agreement. I just want to make sure we talk about that because if we fix the bigger issue, did we hurt the rest of the state by trying to do that? If you could elaborate a little bit on that, I think it is a very important piece to this puzzle.

ALAN BIAGGI:

Once again, Allen Biaggi, for the record. Madam Chair, to the Assemblywoman. You are correct. This is a trade-off. There are some unintended consequences to some projects, not only in northern Nevada, but really statewide. I had mentioned the Virgin Valley Water District, which is obviously in southern Nevada. The tradeoff that I think we're making here is in my mind, we're preserving the integrity of the 14,500 water rights that we feel may be in jeopardy in the worst case scenario. We are opening up the hearing process for the Southern Nevada Water Authority, which addresses the due process issues from the Supreme Court. We have taken out many of the issues with regard to the Truckee River by adding the groundwater—the modifications that I referenced, which we wouldn't want to ever open up the Truckee River Operating Agreement. But there are these other projects that are going to be impacted, and their protest periods are going to be opened. I'm sure that the proponents of those projects are not particularly happy about this.

ASSEMBLYWOMAN KIRKPATRICK:

Can I—

CHAIR BUCKLEY:

Who are they? What are they?

ALAN BIAGGI:

Madam Chairman, we just did a very quick database search this afternoon, and as I had indicated, there is one located in Churchill County in Dixie Valley; some in Elko County; some in Nye County; the Aquatrac proposal, some of their applications in Washoe County; the Jassick—and I believe those are Washoe and Pershing or just Washoe?

JASON KING:

Washoe.

ALAN BIAGGI:
Just Washoe. And the Virgin Valley Water District. There may be more, but those were the ones that we identified in a quick database query.

CHAIR BUCKLEY:
And did you notify them that you were working on this amendment to give them an opportunity to come here tonight?

ALAN BIAGGI:
To the extent that some of these parties were in the building today, we did, but we have not been able to notify all of those parties.

CHAIR BUCKLEY:
And how would they be affected?

JASON KING:
Madam Chair, again Jason King for the record. Again, they are holders of applications that are pending before us. We have not permitted them. What would happen is even though they've already been through the protest period and they may have had ten protestants to their application or no protestants, we would now be opening up that protest period again, and any number of new protestants could now file their protests and get involved in their application.

CHAIR BUCKLEY:
Because their applications have been pending for more than a year, so it applies to them, so they have to reopen? I'm sorry; I'm just trying to understand this. Marilyn Kirkpatrick will explain it.

ASSEMBLYWOMAN KIRKPATRICK:
I'm sorry, Madam Chair.

CHAIR BUCKLEY:
That's okay. I could tell you knew.

ASSEMBLYWOMAN KIRKPATRICK:
I don't want to speak for the water engineer, because I'm far from one. But my understanding is because some of these projects were permitted after the 2003—and this language here specifically talks about the ones that were before 2003. There are some projects that have been moving forward, and in Government Affairs we have learned about it. Each session we've seen the progress on some of them, so we don't want to penalize someone who in 2005 was going through all of the process, but they're not quite there yet. But then how do you balance the two? There are some that are under appeals and should be, so I'm not sure, you know, what the language is for this. I was going to ask if they thought the Legislative Commission idea was a good idea. I get that it needs to be fixed, but I'm not sure how we fix it in two hours, and the Senate still has to even introduce it.

ALAN BIAGGI:
You wanted a—

CHAIR BUCKLEY:
That's to you.

ALAN BIAGGI:
Okay, thank you. Once again, Allen Biaggi for record. I think that idea does have merit. I'm not sure we're going to see a resolution of this issue in this special session, but I think the faster that we can come to a resolution one way or another is in everyone's best interest, so when that idea was proposed, I thought, yeah, that's something we would participate in and work very hard to reach a solution and compromise with all of the parties.

CHAIR BUCKLEY:
Assemblyman Bobzien.

ASSEMBLYMAN BOBZIEN:

Thank you, Madam Chair. Following along with your comments and the comments of my colleague from North Las Vegas, this started off as being portrayed in the press as an issue obviously related to southern Nevada and the Southern Nevada Water Authority, and yet this afternoon and this evening, it's turned into an issue that is very northern Nevada-specific and specific to Washoe County and my district and the districts of my colleagues up here. You know, we're hearing about the possible unintended consequences for the Truckee River Operating Agreement, Honey Lake—making sure that that's not part of this. But then we're also hearing, you just mentioned, your quick database search of Aquatrac and some of the other pending applications. When I heard "quick database search," I immediately thought, "Well, what else is out there?" Could you comment as to where you are in your certainty right now that there may be other issues out there that we need to think of? I would hate to see any of these projects, these applications, put into jeopardy, because that has a direct result on what's going on, the rates that my constituents pay for their water. I'm finding myself—even though this is a state issue with state importance statewide—right now I'm thinking about my folks from my district that might be directly impacted if we do this the wrong way.

ALAN BIAGGI:

You are exactly correct. You know, it has implications not only to northern Nevada, but implications to all of the state, as does the Supreme Court's ruling putting into potential jeopardy the 14,500 applications that I referenced. So there's not a good decision here, or an easy decision, without implication or without ramifications. We were only able to do, as I said, a very quick database search, so there could very well be other projects out there that we have yet to identify, and I think that that's probably very likely.

ASSEMBLYMAN BOBZIEN:

Madam Chair, if I might. Thank you, Allen, for your frankness, and I do concur that we do have to pay attention and we may very well likely have to do something. I just think that we have to—there's a balance there. We have to figure it out, and we're going to have to really do some exploration to make sure that we're doing it right.

CHAIR BUCKLEY:

Thank you Assemblyman Bobzien. Assemblyman Segerblom.

ASSEMBLYMAN SEGERBLOM:

Thank you, Madam Chair. You indicated the attorney had written this amendment—Carl? Was it a Carl someone who had written the amendment?

ALAN BIAGGI:

That's correct, Carl Savely; he's a water rights attorney here in northern Nevada.

ASSEMBLYMAN SEGERBLOM:

Does he have a client he is representing or was that just—he did this out of the kindness of his heart?

ALAN BIAGGI:

I was provided this amendment by Michael Hillerby, and since I was coming down to do it, I told Michael I would present this. I can say that we feel—and I think the individuals that have been working on this language over the last few hours feel—that it's a good amendment, and as Mr. King said, adds value.

CHAIR BUCKLEY:

And Mike Hillerby is here from Wingfield Nevada, Coyote Springs, and would be happy, I'm sure, to comment when we're through here.

ASSEMBLYWOMAN KIRKPATRICK:

Madam Chair, I'd like to clear a few things. I asked for that. I spoke to the water lawyer myself today. I don't know who he is representing because I asked not to have that part of the discussion. I have been talking with him as well as one from Arizona and one from Utah this

week. It's me who asked for it, but quite frankly, it is pretty hard to find any attorneys on Sunday afternoon, and especially since the hockey Olympics was on, so I was really struggling. I just want to take the blame for reaching out and asking him for his thoughts—and that's all I did was ask for his thoughts. Mr. Hillerby, unfortunately, got in the middle of it, but I'm the one who did all the asking.

CHAIR BUCKLEY:
And just for the record, there are some attorneys that work on Sunday. Assemblyman Arberry.

ASSEMBLYMAN ARBERRY:
Thank you, Madam Chair. The question I have for you—this is the part that I do not like about a special session. This is like taking a cake, and everyone is throwing in their mixes and their spices at the last minute. What would have happened if we didn't have a special session? What would you gentlemen be doing if we didn't have a special session?

ALAN BIAGGI:
Assemblyman Arberry, that's a very good question. It was asked of me in the Senate last night. Again, I feel very strongly that this issue has significant implications to water within the state of Nevada. It would have been my recommendation to the Governor to call a special session. We've heard today that that still may be an option. Now whether he would have felt that this was a strong enough issue to call all of you back, I don't know, but that would have been my recommendation to him because of the implications.

CHAIR BUCKLEY:
Assemblywoman Leslie.

ASSEMBLYWOMAN LESLIE:
Thank you, Madam Chair. Following up on Mr. Arberry's comment, you would have worked out some language before we came to a special session. I assume you would have held hearings and notified all the interested parties, right?

ALAN BIAGGI:
Assemblywoman Leslie, yes, I think if we'd have had more time, we certainly would have worked on this in a more consensus-based fashion and with all of the affected parties. Unfortunately, the timing of this situation really didn't allow that.

ASSEMBLYWOMAN LESLIE:
Okay. And my question is—back to all those cases in Washoe County, I'm thinking of Honey Lake particularly because you remember how controversial that was in Washoe County. So if we did change this in the next few hours and all those people—we know at least those cases would be affected—wouldn't we be taking away their due process rights to at least testify before us and let us know what opening up those protest periods would mean for their projects? That makes me very uncomfortable knowing that this would affect them and not having them have the opportunity to be heard.

ALAN BIAGGI:
Assemblywoman Leslie, that's a valid perspective. I would like to point out that the amendments that I think we've provided exempts out, or allows the Honey Lake Valley ruling to stand. But I think you make a good point that they are not here—or the protestants are not here to speak their position.

CHAIR BUCKLEY:
And I would note that Mr. Biaggi shared this idea with the Governor's office prior to the special session, which sent the language to Ms. Kirkpatrick. There has been dialogue, but I think part of the problem is we're focusing on the budget, so all of us have been working many, many hours a day, but only on the budget. And because the ruling just came down, it didn't really allow the opportunity for the water engineer to do open hearings. But you know, I'm kind of leaning towards the fact that we're not going to have enough time to do this. So we have

four more members with questions. I guess it will still help to get more of this on the record, to get us more up to speed so we're more prepared for the proper resolution. And the budget bill is not here yet, right, Ms. Smith, but it's coming? Okay, we're supposed to get an estimated time of arrival pretty soon. So let's go through the rest of the questions for these witnesses and then we'll see where we are and see if we want to keep taking testimony, or if people want to talk about how we should handle this, okay?

Assemblyman Carpenter.

ASSEMBLYMAN CARPENTER:

Thank you, Madam Chairman. In regard to your database search, what did you find in Elko?

JASON KING:

Thank you, Madam Chair, to Assemblyman Carpenter. What we found is some time ago, Elko County had filed—I can't give you the exact number of applications—but just for municipal development within the county, and they were to move water from one basin to another basin, but just in support of future economic growth in the county. I would say that that's the same instance for Nye County; they did the same kind of thing. In other words, just try to go in and file applications and plan for the future in the county, so that's what those applications are based upon.

ASSEMBLYMAN CARPENTER:

Thank you, Madam Chairman. I kind of remember that, and I think they're kind of important to Elko County, so they'd probably want to be involved in any conversations. Thank you.

CHAIR BUCKLEY:

Assemblywoman Spiegel.

ASSEMBLYWOMAN SPIEGEL:

Thank you, Madam Chair. Mr. Biaggi, just a quick question. If we took the language that you proposed to amend in, in section 1, subsection 3, line 1 that limited the BDR to apply only to groundwater interbasin transfers, would the rest of the water rights issue, then, from the Supreme Court's decision, then be remanded to district court for adjudication?

ALAN BIAGGI:

Assemblywoman Spiegel, once again, Allen Biaggi for the record. What the amended language does is it references only the protest periods for groundwater interbasin transfers, so everything else—the surface water and other non-interbasin transfers—would be active and valid. It just makes a reference to this section—that it applies only to those groundwater interbasin transfers.

ASSEMBLYWOMAN SPIEGEL:

To follow up, didn't the Supreme Court decision, though, apply to all water rights, or was it only applying to groundwater interbasin transfers?

ALAN BIAGGI:

Very good question. The Supreme Court's decision actually only spoke directly to the protestant period; that's really the basis of the decision. But the implication of the decision is it opens it up to all water rights, whether they are surface water, groundwater, interbasin, or intrabasin.

ASSEMBLYWOMAN SPIEGEL:

So then if we took legislative action only on the groundwater interbasin transfer, then what would happen with the questions that would still remain for all of the remaining water rights?

ALAN BIAGGI:

Let me answer that by saying what would happen if this amendment were not put in, and that is that it would bring in potential surface water interbasin transfers such as the Truckee River Operating Agreement or other projects. So it is important that we narrow and define what the

protestant period applies to, and so what we did here is add it for groundwater interbasin transfers.

ASSEMBLYWOMAN SPIEGEL:
Okay, thank you.

Chair Buckley announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Committee of the Whole in recess at 9:11 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 9:12 p.m.
Vice Chair Anderson presiding.
Quorum present.
Issues concerning water rights considered.

VICE CHAIR ANDERSON:
Mr. Stewart.

ASSEMBLYMAN STEWART:
Thank you, Mr. Chairman. Sometime in the far distant future—certainly not tonight when we take this matter up again, of water—would it be prudent to extend the year period to two or three years since we seem to be having a hard time getting things done in that year period?

JASON KING:
Thank you, Mr. Chairman, to Assemblyman Stewart. I apologize—Jason King for the record. Actually, one of the 2003 amendments to this specific section of the statute did say that anything filed after 2003 that was not acted upon within one year remains pending before the State Engineer, so that 2003 language takes care of that issue.

VICE CHAIR ANDERSON:
Mr. Horne.

ASSEMBLYMAN HORNE:
Thank you, Mr. Speaker Pro Tem. I'm curious—and this is aligned on some of the questions that have been asked by the Assemblywoman from Henderson and others. New names have come out like Honey Lake, and I'm sure there are some others that I haven't heard of before, but it begs the question that—I understand you're talking about narrowing it. But any actions that we take on narrowing it, then there are others that may be seeking remedies, through that Supreme Court action or not, will be left out. It seems to me there are a lot more parties or applications at risk that are not on the surface, so to speak, that aren't here today and haven't been here all week, and may not even know that this is being debated during the special session.

ALAN BIAGGI:
For the record, Allen Biaggi. Assemblyman Horne, you are exactly right. There is no doubt you are correct in what you're saying—that there are parties out there who may be affected that have not been identified and did not have an opportunity to participate.

VICE CHAIR ANDERSON:
Mr. Grady.

ASSEMBLYMAN GRADY:
Thank you, Mr. Speaker Pro Tem. For either Allen or Jason, would the new legislation have any effect on the ongoing discussions and legislation on inventories for over-appropriated basins or possibly over-appropriated basins, and will you have time in a year's period to even address the inventory questions?

VICE CHAIR ANDERSON:
I'm sure he's addressing you, Mr. Biaggi, unless you want to pass it off.

JASON KING:
Jason King for the record. Only from the standpoint that, depending on what the decision that's either rendered from the district court or through a passage of this bill, has on our office in terms of manpower. Obviously, if all of a sudden we have a thousand hearings thrown at us, then that certainly will impact what other work we can get done throughout the state, so it clearly is dependent on what the outcome of that Supreme Court decision is.

VICE CHAIR ANDERSON:
Ms. Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you, Mr. Chairman. So this question, Jason. How long do you think that it would take to do these hearings, do them properly? If the Legislative Commission met in the next couple of weeks?

What do you think the time frame would be, being that we're north and south trying to make sure that we have plenty of testimony. I know water, couple of hours for sure each time, if not five or six. Would we have to go two weeks, three weeks? How many meetings? Kind of an idea of what it would take to do this and resolve it quickly, because I think that everybody wants to resolve it, but I'm just not sure we can do it tonight. I think it has to be fixed, and I know I've committed to start hearing water on the third day of the next session, but we've got to do something in between. What do you think it would take in reality?

ALAN BIAGGI:
Mr. Chair, Assemblywoman Kirkpatrick. So that I understand the question, I think you're asking if we were not to take this action tonight and we were to open up a dialogue—

VICE CHAIR ANDERSON:
Mr. Biaggi, I need you to identify yourself. We have two gentlemen speaking, and the secretary needs to keep that clear.

ALAN BIAGGI:
Yes, I'm sorry, Mr. Chairman. Allen Biaggi, for the record. I think your question is if we were to open that dialogue and try to craft some language for introduction in the regular session in 2011, how long would it take us to get a crafting of that language? I think that's a really hard thing to come up with at this point, but it's not going to be an easy process or a quick process. There are going to be a lot of parties involved and a lot of attorneys involved. I would say it will take a couple of months.

ASSEMBLYWOMAN KIRKPATRICK:
Mr. Chairman, may I follow up?

VICE CHAIR ANDERSON:
Mrs. Kirkpatrick for a follow-up.

ASSEMBLYWOMAN KIRKPATRICK:
Thank you. So let's hypothetically say if we started—I would say March, but I think that's tomorrow—if we started April 1—and what I'm trying to understand, though, is what would be a plan? Would it be two meetings of eight hours a week for five weeks, or would it be one eight-hour meeting? Because realistically, people have got to know how many hours it is going to take and what you perceive. And I understand I'm putting you on the spot here, but quite frankly, we made a lot of headway when we could all actually start talking about this together in three hours. So I know we could move—I don't want to move at a turtle's pace, and I'm not sure that we can wait until February of 2011 to do this. Are we looking by the summer we could have it done?

ALAN BIAGGI:

Once again, Allen Biaggi, for the record. Assemblywoman, the concept was just brought up probably less than an hour ago, and I haven't really had a chance to think it through. I would hope that we could get it done very quickly. If it's going to be an Executive Branch bill, I think our deadline for BDR submission is usually in April, or certainly by the first of May. That's a very quick timeline to try and get something done, but at the same time, I think it takes a deadline like that in order to get everybody working together and to put their noses to the grindstone and to craft the language.

ASSEMBLYWOMAN KIRKPATRICK:

But I guess I'm—and I'm tired, so maybe I'm not making myself clear. If we did as the Speaker suggested—maybe we started working on stuff now and if we saw that it was impacting and we called for a special session, a one-day special session, what would be the time frame? Because I think it's too late to wait until 2011. I get the whole BDR thing, but I'm thinking we're trying to fix it sooner, and I think there are a lot of people in this building that want to hear that we want to fix it sooner. So if we went that direction—humor me, pick a month. I could pick one. I could tell you how fast we could do it.

ALAN BIAGGI:

Once again, Allen Biaggi. Assemblywoman, I really can't answer that at this time. I'd really like a few hours at least to think about it, discuss it with Mr. King, and come up with some time frames in my head. I really haven't had time to think it through at this point.

VICE CHAIR ANDERSON:

Mr. Goicoechea.

ASSEMBLYMAN GOICOECHEA:

Thank you, Mr. Vice Chair. Jason, Allen—I guess as I'm looking at this, I'm thinking realistically—

VICE CHAIR ANDERSON:

If you would call them by their last names, sir, if you would, Mr. Goicoechea.

ASSEMBLYMAN GOICOECHEA:

Yes, I'm sorry, Mr. Chair. I can't remember their last names, how's that? Mr. King and Mr. Biaggi, given that we're looking at a time frame and some legislative hearings—and I do agree with that. I think realistically we could craft and work on some language that would make it a lot easier in the next session. But I think realistically, and I'm just going to question you, we're not going to see the reconsideration by the Supreme Court, especially given the extension requested by Southern Nevada Water Authority and/or a decision by the district court in that remand, before we get into the next session. Do you agree, professionally?

JASON KING:

Thank you, Mr. Chairman, to Mr. Goicoechea. I'm sorry, Jason King, for the record. Mr. Goicoechea, I think it is possible. The Supreme Court tomorrow could say—could deny the motion for reconsideration, could go directly to the district court. Could the district court respond before next session? I think it's possible, but you're correct. A 30-day extension has been requested to file a motion for reconsideration with the Supreme Court. If they accept that, then that motion will be filed 30 days into the future. Then again, they can look at that and take as long as they want or as short as they want. I guess the short answer is we could possibly get a decision before the session, but we may not.

ASSEMBLYMAN GOICOECHEA:

A follow-up if I may, Mr. Chair. Well, I think realistically the courts probably aren't in any bigger hurry than we are to take this issue up. So as long as we can keep passing it back and forth—I think if they think that the Legislative Commission is going to deal with this and we are looking at coming up with some good language, well thought out language, I do believe that the courts probably won't hurry their process along either. Thank you.

VICE CHAIR ANDERSON:
Thank you. Other questions for Mr. King or Mr. Biaggi? I agree, Mr. Goicoechea. It's hard to keep—I'm so used to calling them by their first names, it's hard to imagine otherwise. Thank you, gentlemen. Thank you very much.

KYLE DAVIS, POLICY AND POLITICAL DIRECTOR, NEVADA CONSERVATION LEAGUE:
Thank you, Mr. Chair and members of the Committee of the Whole. For the record, Kyle Davis, Policy and Political Director, Nevada Conservation League. Also, today, I'm somewhat pinch-hitting for the Great Basin Water Network as their representatives are far away in a meeting and could not make it here, so I'm trying to represent their views the best that I can.

Just to be clear, I know that there was a hearing on this issue last night in the Senate. In the Senate, I did testify to the fact that I felt that it was the most appropriate course of action to let the Court make its decision. I think that that's—we've heard the testimony that there are significant constitutional issues that come up, so that was my feeling in the Senate last night. I have been a part of the discussions today—we're talking about the BDR that you have in front of you. There has been significant progress on negotiations in terms of language that may work, language that may not work, and that's ongoing at this time. I feel like we are somewhat close, but there are still some things that need to be hammered out.

Just for the record, our role in this, and the reason that we have an interest in this, is because the Great Basin Water Network took this case to court because they wanted to preserve the rights of the people to be a part of this process. When the application affects them, they felt that they needed to have those rights, and essentially, as it stands right now, the Supreme Court has ruled that they essentially would be able to get in based upon the two remedies that are provided by the Court. So it's our interest to preserve that. It is our interest to preserve the ground that was gained through the Court. We feel that these members of the Great Basin Water Network did act under the law fairly, used the system fairly, and that they ought to be able to have the remedies that have been afforded to them by this court decision. To the extent that we can reach language that will allow for them to be a part of the process and will allow for them to have the same rights that they would have been given under each of the remedies provided by the Supreme Court, I think we may be able to find some agreement. I share some of the concerns that have been brought up by the body, but I am committed to working with all parties to see if we can reach a resolution that will be able to help—I mean, that will make all parties happy at the end of all of this.

Thank you all. If you have any questions.

Chairman Anderson announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Committee of the Whole in recess at 9:27 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 9:28 p.m.
Chair Buckley presiding.
Quorum present.
Issues concerning water rights considered.

CHAIR BUCKLEY:
Assemblywoman Leslie.

ASSEMBLYWOMAN LESLIE:
Thank you, Madam Chair. Do you think that resolution can happen in the next two and a half hours? And I'm not being facetious, but really, can that happen?

KYLE DAVIS:
Thank you, Mr. Chairman. Again, Kyle Davis, for the record. To Assemblywoman Leslie, I don't know. I feel like we are close. It is possible that it could happen. I know we obviously

have to get a bill redrafted, and we have to take a look at the language and make sure that it works. I am certainly committed to trying to make that happen, but I don't know.

CHAIR BUCKLEY:
Assemblyman Horne.

ASSEMBLYMAN HORNE:
Thank you, Madam Chair. This is just a thought. It just seems to me that we're trying, contorting ourselves really hard to try to get something passed. But it seems like when any legislative body, whether it is local, state, federal, tries to ram and jam something through really quickly, it turns out really bad. And water in Nevada seems to be something a little more important than that; it's not something that we would want to ram and jam and make it really bad because it's too important. And I understand people believe that we need to act now or a lot of bad things are going to happen, but I think that if we don't do it right, believe it or not, I think it could be worse. We've heard people talk about unintended consequences. I appreciate all the testimony and everything today, but I have pause.

CHAIR BUCKLEY:
Well, I'm going to let representatives from the Water Authority and the Las Vegas Chamber of Commerce get in some testimony here.

I would be inclined to perhaps suggest that we take a motion and make some statements on the record along the lines that we recognize that this is an urgent Nevada issue, that there appears insufficient time to ensure adequate notice to individuals to testify, that we are committed to examining this issue and making statutory changes and adopting a remedy that is fair and equitable to all concerned, that there is a sense of the Assembly as a body that we want the priority for the applicants preserved, retroactively applied, and that we're still concerned about the remedy and the fairness and the treatment of applications that have been pending for quite some time and adequate notice while at the same time not adversely affecting those from northern Nevada that we heard tonight, and perhaps crafting it a little bit more eloquently than that but to make that type of a motion. Maybe I'll have the chair of Government Affairs draft something up and everybody could look at it, and then I could put that on the record. We could enter it into the journal. We could suggest that the Legislative Commission appoint a special committee to examine it, to have hearings, to suggest language, and that it be readdressed in a subsequent special session if the Commission felt that it rose to the level of urgency and needed to be addressed, something along that line. What are people's feelings about that?

Well, let's hear the testimony from the Water Authority and the Chamber of Commerce. Our bill still isn't here, is it Assemblywoman Smith? Five minutes, they said, and it's being copied. Good news.

We would appreciate and welcome your succinct testimony. You may proceed.

SAM MCMULLEN, REPRESENTING LAS VEGAS CHAMBER OF COMMERCE:
Madam Speaker, Chairman of the Committee of the Whole, and members of the Committee of the Whole, my name is Sam McMullen. I'm here tonight representing the Las Vegas Chamber of Commerce. I will be short.

This is a critical issue for the Chamber for a number of reasons, not the least of which is that the Supreme Court case affects a lot of water rights, adjudicated and otherwise, and so consequently we think that there is, at this moment, a lot of turmoil. What's being asked for of you tonight is not any change but actually something that would keep the status quo. I will say that is if, in fact, you choose to go forward with a bill, which we would hope and we would recommend and strongly encourage. On the other hand, if the only acceptable alternative is something like the Speaker just suggested, as long as that was done in an incredibly timely fashion—which I think would probably mean a month and I'll tell you why as we go through this—I think that would be the best because we need this resolved very quickly.

Let me just see if I can say—I'll let you ask me questions, but I'm going to do it very quickly because I know you've got other things to move to when they come in the door. Right now, every development or every bond or every financing aspect of many of the things that are involved in southern Nevada are dependent upon a water resource plan that says that there will

be availability of water. It is generally, usually a bond requirement. And the way that the Supreme Court decision sits right now, it actually is throwing that water resource plan into limbo in the sense that it is based on things that they thought were approved and now may not be.

First and foremost, you need to understand, as it has been discussed here today, that the water rights—but not only of the Las Vegas Southern Nevada Water Authority but the water rights of a lot of people who have adjudicated water rights and have turned those over to your utilities in the state—those are up in the air and could actually be subject to challenge if, in fact, the law of the case in the Supreme Court case, that all permits that were issued after one year after the filing period for protest had closed. So basically what that means is that any adjudicated water right that took longer than that theoretically right now is no longer valid; someone else could file on it, and we could have a problem. So the water resource plan actually is the reason why a lot of banks, lenders, bond companies do actually grant money. It sounds funny, but it's actually very much a case, and we right now are expecting Pat Mulroy of the Water Authority to have to answer these exact questions in front of an editorial board put together by the *Wall Street Journal* about what this decision means for water, growth, development, and the future of Las Vegas. So frankly, what we're worried about is having an answer to this currently today.

Let me tell you also that the—everybody that you're talking about who has either a water right or an interest in a water right—they're all up in the air; they're all affected by the Supreme Court case. What in fact we are suggesting you would do would be to limit that, and I think the easiest way to say it is the right that you had relating to water or protests on January 27 of this year would be after you pass this legislation would be exactly the same right that you have going forward. And that, particularly in the case of interbasin transfers, as you heard Mr. Biaggi suggest, would mean that any of the—actually, it's better for the protestants in those cases that are still pending, because what it does is it clearly resolves the Supreme Court question of whether those people could get notice and could get an opportunity to protest. So consequently, the language in front of you does that. I would say they are already involved. You ought to please understand that a rancher in any county in Nevada who had a water right that was granted after it had been filed for a year could now have that water right thrown up in the air and someone else could file on that water right today. Or worst case, there could be applications stacked on top of that initial application which granted the rancher those water rights, or the business those water rights and under the Supreme Court's ruling, it would say that only the applications that have been filed in the last year are effective. Consequently, we would move in Nevada to a last-in-time situation, not a first-in-time, for an application for the use of water, so I think you really need to fix this.

I will say that we passed out some documents that sort of validate this, and in the interests of time, I'm going to have you read them. In there is a letter from an underwriting specialist who basically does this, and he has given his opinion. We've also included his résumé, so you know it's not my brother-in-law. It is actually someone with some expertise who has talked about the effect on our growth, our development, and our continued economy. And if all of us, as we all know, need revenue, the last thing we want to do is put any obstacle in front of the redevelopment or the revitalization of our economy and its regeneration or getting the construction and other job issues up and running as fast as possible. So this is clearly a bar to that.

I would like to indicate, though, that if you do make a motion, I think you should add two things to it. One is that you specifically request that the Supreme Court defer any action until you've had a chance to clarify legislative intent, and as this legislation would try to do, the effective statutory remedy. And second of all, that the water engineer put the applications that are filed—because there have already been 228 filed since this case was decided—and you put those in a category separate and apart so that if you had to unwind those applications, to the extent that they wouldn't be effective applications, you know exactly which ones those are and what the effect because our hope would be that the action here would be to put, as I said, the status quo together and no changes.

I also did one other thing—and it's only my mock-up so it would not be perfect and it certainly wouldn't be what your bill drafters would do—but there is a hole under the proposal that is in front of you as it relates to applications that were filed before 2003 that took more than one year to act on and yet were acted on after 2003. So the questions that Assemblywoman

Spiegel and Assemblyman Mortenson asked are very cogent questions because there is a big hole in terms of applications that were filed prior to 2003 but ended up being acted on after 2003, and you want something similar to section 2 at the bottom of your BDR that you're looking at, 48-46. You want something similar to that to be incorporated into this bill to cover those cases filed pre-2003 and the new law—new amendment, excuse me, in 2003 that allowed it to last longer than a year if it took a year. And second of all, that they might have been acted upon with final action by the State Engineer after 2003, so that needs to be addressed in the language that you have in front of you. Remember, when you're clarifying legislative intent, which is what you're being asked to do, that this had a full hearing in the Assembly—this issue of a year or longer had a full hearing in the Assembly in 2003 and a full hearing in front of the Senate in 2003. So to the extent that you're worried about parties that aren't here today, first of all, from 2003 on, the law has been very clear, but up until that point—and it was opposed, there was a lot of interaction, there was a lot of legislative process in hearings and discussion that led to the law that you adopted in 2003—you actually put in the bottom of that law a transition section that said it wasn't supposed to apply to pending. Pending was something that the Supreme Court took up—

CHAIR BUCKLEY:

Sam, I'm sorry, I'm going to have to stop you there because our bill has arrived, and I need to give members an opportunity to read through it because that needs to be done. So I'm going to let Mr. Guild have two minutes, and then I'm going to have to wrap up.

JOE GUILD, REPRESENTING SOUTHERN NEVADA WATER AUTHORITY:

Thank you, Madam Chair, Madam Speaker of the House, and the Committee of the Whole for allowing us some time to talk to you about this. I appreciate that very much. My name is Joe Guild. I'm an attorney in Reno, Nevada, representing the Southern Nevada Water Authority. I won't repeat what Mr. McMullen said, but I want to reemphasize that the Supreme Court decision that's been discussed here tonight in so much detail did create a hole in the Southern Nevada Water Authority's resource plan, and that hole in that plan, as Mr. McMullen said, has thrown into doubt the reliability and the sustainability of the southern Nevada water supply on into the future such that financial institutions, bonding companies, potential projects that are contemplated and the people contemplating proposing those projects are asking questions about the reliability of that water supply. This is a very critical thing because we're looking at the possibility, I think, of jobs being lost or not created in southern Nevada and all of the other ramifications that flow from that. With this legislation, we believe that you can solve that, and we would urge you to do that tonight, and particularly the last sentence of the highlighted paragraph on page 2 of the proposed legislation; subsection 3 of section 1 of the proposed bill is the most important thing. This is the retroactivity and retrospectively language that preserves the priority of any existing applications. And then the amendment that was offered up to add to that we would agree to. And just to finally—and we do think that that retroactivity is key to preserving that resource plan and letting lenders understand that we do have a reliable and sustainable supply of water for southern Nevada.

Last point: This would greatly expand the obligation that the Southern Nevada Water Authority has going forward to make sure that due process rights are preserved. And you've read the language so you understand and you heard Mr. Powers talk about that. I just want you to know that it is our position that we believe that the due process implications of this proposed legislation are good and proper and necessary, and whether the fact that they're expanded as to the requirements imposed upon the Southern Nevada Water Authority, we're more than willing to take those obligations on. Those affected parties, as the Speaker said earlier, and successors in interest who do have an affected interest in this situation—the Southern Nevada Water Authority applications—should have protected due process rights, and we agree with that concern that would be addressed if you were to pass this legislation.

Thank you again, Madam Chair, for this opportunity. I saw the big piece of paper come in, and good luck with that, too.

CHAIR BUCKLEY:

Thank you very much for your testimony.

With that, what I'd like to do is take a ten-minute break, allow everybody to have an opportunity to stretch and begin reviewing the bill, and then we'll come back and take up the bill in Committee of the Whole, so we're in recess until 10 o'clock. Chair Buckley announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Submitted Exhibits

See below.

February 26, 2010

To: Julie Wilcox
From Guy Hobbs

Re: Credit issues associated with water resource reliability

A question has been posed to us regarding the impact that uncertainty in the reliability of water resource delivery to southern Nevada might have within the credit markets. Without question, the impact will ultimately be significant, negative and far-reaching, and can be avoided if the impacts created by the recent Supreme Court decision can be mitigated as quickly as possible through legislative action.

The economy of southern Nevada and the State as a whole is heavily reliant upon growth and development. Roughly 20 percent of the economy in southern Nevada is directly or indirectly tied to construction, as are the fiscal systems of the State and local governments. This sector of our economy has been severely impacted by the recession, as evidenced by the high levels of unemployment in this sector and the degradation of revenues (e.g., sales tax, modified business tax, real property transfer tax, etc.) associated with greatly reduced levels of construction activity. Our ability to recover from the recession and return to a level of normalcy will greatly depend upon the rehabilitation and health of the construction sector.

Central to the recovery of the construction sector will be the confidence on the part of developers and investors in the future of the local economy and the reliability of key factors that either promote or impede investment and development. In this regard, there is nothing more central to these investment decisions that the reliability of water. Likewise, it is a certainty that the credit markets will recognize that an uncertain future with respect to the reliability of water will dim the future hopes for economic recovery in southern Nevada. The concerns of the part of the credit community will be manifested in the form of reduced confidence and credit ratings and, more importantly, a higher cost of capital for necessary public infrastructure projects. Since such a large part of our economy and fiscal system is built to rely upon a healthy and robust construction sector, it is inevitable that the anticipation of reduced private sector investment in residential and commercial development will result in negative credit market implications.

There are two actions that can be taken to avoid the negative credit fallout that may result from the uncertainty surrounding the reliability of water delivery into the future. The first would be to restructure the fiscal system of the State to lessen the reliance upon growth and development. While this is a worthwhile task given the problems inherent within the system, this is far from a quick fix. Fixing the fiscal system, however, would not be a cure for this problem if the uncertainty of future water delivery were to remain in question. The second and more immediate approach would be to mitigate the uncertainty created by the recent Supreme Court ruling, allowing for the concerns regarding reliability to be alleviated.

Peter Miller
Managing Director

Peter W. Miller, a Managing Director, joined Public Financial Management, Inc. in 1991 and is currently the manager of the firm's Western United States Practice.

Mr. Miller has, structured, and managed the sale of over $20 billion of tax-exempt debt. He has advised clients regarding the issuance of many types of debt including: fixed and variable rate general airport revenue bonds (both senior and subordinate), passenger facility charge revenue bonds, general obligation bonds, sales tax revenue bonds, lease and installment purchase certificates of participation, lease revenue bonds, tax increment bonds, water and sewer revenue bonds, current and advanced refunding bonds, general, special assessment and Mello-Roos special tax bonds, and tax and revenue anticipation notes.

A sample of Mr. Miller's clients include: San Francisco International Airport, McCarran International Airport (Las Vegas, NV), the City and County of San Francisco, the cities of Modesto, Folsom, Roseville, Rancho Cordova, Pittsburg, and Lincoln, Solano County, Clark County (NV), Clark County Regional Transportation Commission, and Contra Costa Transportation Authority, among others.

Mr. Miller was the Director of Public Finance for the City and County of San Francisco from 1986 to 1991. He was responsible for all debt issuance sold by the City. Some of the major financings and accomplishments during Mr. Miller's tenure as Director of Public Finance include: $137 Million Lease Revenue Bonds for the expansion of the Moscone Convention Center; $60.5 million Lease Revenue Bonds refunding the 1979 Moscone Lease Revenue bonds; $145 million sewer revenue bonds used to builds secondary treatment facilities; $316 million in general obligation bonds issued in six series; the creation of San Francisco's land-based financial plan (a series of Mello-Roos districts) to pay for the construction of the public infrastructure in the 300-acre Mission Bay multi-purpose development project; the development of San Francisco's first equipment lease-purchase program using tax exempt bonds; assisting the San Francisco Redevelopment Agency issue its first series of Mello-Roos bonds and several series of tax increment bonds totaling approximately $70 million, and developing the first strategic plan for the purchase and construction of City office buildings.

Mr. Miller received his Bachelor of Arts degree in American Studies from Syracuse University, his Master's Degree in Economics from Tufts University and his Masters Degree in City and Regional Planning from Harvard University, John F. Kennedy School of Government.

February 27, 2010

To: Members of the Nevada Legislature (via Julie Wilcox)

From: Peter W. Miller, Managing Director
Public Financial Management, Inc.

Re: Credit concerns relating to water resource reliability in southern Nevada

I have been asked to review the briefing paper previously provided to you by Guy Hobbs regarding the concerns arising from the recent Supreme Court decision affecting the Southern Nevada Water Authority's water rights and water resource plan. Following are my observations and comments.

If the Southern Nevada Water Authority's water resource plan, including the water importation component of that plan, is called into question as a result of the Supreme Court decision, it is expected that the credit markets will view this as a noteworthy and negative development for the future of southern Nevada. Clearly, the reliable delivery of water into the future will be a determining factor for future investment in the community and, consequently, the economic growth and development of the area. Without sufficient and reliable water resources, it would be expected that the credit markets would view this as a material weakness in the future prospects of the community. Less than positive feelings on the part of the credit markets will translate into higher costs of borrowing for the community and diminished credit ratings.

I concur with the viewpoint previously noted in Mr. Hobbs' analysis that mitigation of the problems created by the Supreme Court decision should be considered at the earliest possible opportunity. Dealing with this issue now will help avoid the potential of near-term credit implications for Nevada issuers caused by the gap in the Southern Nevada Water Authority's water resource plan.

Peter W. Miller
Managing Director
Public Financial Management, Inc.
50 California Street, 23rd Floor
San Francisco, CA 94111

ADD A NEW SECTION AS STATED BELOW:

FOR OTHER THAN AN INTERBASIN TRANSFER OF GROUNDWATER

Sec. X If an application described in NRS 533.370 was filed with the office of the State Engineer before July 1, 2003, and the State Engineer did not act upon the application within 1 year after the final date for filing a protest, but thereafter the State Engineer approved OR REJECTED the application ~~before~~ ON OR AFTER July 1, 2003, the State Engineer's failure to act upon the application within 1 year after the final date for filing a protest does not affect the validity of the ~~approval granted~~ ACTION BY THE STATE ENGINEER and such a failure to act may not be used to challenge, contest or dispute the validity of the ~~approval granted~~ ACTION TAKEN.

--2--

PROPOSED BY THE LAS VEGAS CHAMBER OF COMMERCE

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February 5, 2010

Mr. Steve Holloway
Executive Vice President
Associated General Contractors – Las Vegas Chapter
150 N. Durango Drive, Suite 100
Las Vegas, NV 89145

RE: Potential Impacts of the Nevada Supreme Court's Ruling on Water Rights Applications

Dear Mr. Holloway:

Pursuant to our recent discussion, we have reviewed the Nevada Supreme Court's recent ruling on water rights applications relative to its potential economic and fiscal impacts on the state of Nevada. A summary of our analysis is provided below.

On January 28, 2010, the Nevada Supreme Court issued a ruling that appears to invalidate several water rights applications held by the Southern Nevada Water Authority and other interests across Nevada because of the time it took for the State Water Engineer's Office to review certain applications. The full implications this ruling are unclear at this time; however, it does have the potential to materially delay the timing of Nevada's in-state ground water development program should the 1,851 water rights applications filed between 1947 and 2002 ultimately be found to be invalid and have to refiled. Assuming *arguendo* that this is the case, this situation would have immediate and long-term impacts on the state's economy and its fiscal system.

A key risk for any southern Nevada investment is availability and sustainability of water. These concerns are heighted by a serious drought and the reality that 90 percent of southern Nevada's water is now sourced to the Colorado River. Water levels in Lake Mead continue to drop; and, if the current drought continues or worsens, the ability to draw water through one of the existing intakes will be put into jeopardy. This, in turn, would limit the ability to get water to the region's 1.9 million resicients and businesses that provide jobs for its 982,000-person labor force.

Water-related risk concerns have been mitigated by southern Nevada's water resource development and management history as well as the community's ability to demonstrate a viable plan to sustain water resources into the foreseeable future. This plan includes in part the development of a third water intake in Lake Mead as well as the in-state ground water program. When combined, these projects allow the community to maintain an ability to draw water from its primary existing source, the Colorado River, and to diversify available water resources. This is not only important to the community's ability to grow into the future but also its ability to meet the current water demands of existing residents and businesses.

The implications of a loss of confidence that southern Nevada's water resource plan is viable are compelling and potentially far-reaching. Immediately, southern Nevada could expect a sharp reduction in new capital investment, putting additional pressure on an already ravaged construction industry that currently represents 7.6 percent of the region's employment and more than 25 percent of its unemployed labor force. Southern Nevada businesses facing huge debt loads as a result of nation-leading

APPLIED ANALYSIS

declines in property values and large increases in long-term debts would also be expected to face even more challenges in refinancing debt or persuading lenders to take a longer view on investment maturities. Already depressed property values, residential and commercial, would be expected to fall further or remain fixed at depressed levels as buyers and bankers manifest their concern by inaction. State and local governments would likely see key ad valorem and sales tax revenues fall as well as their bond ratings reduced as future economic growth would be impaired by the risk of water shortage.

There is neither an industry nor a sector of the economy that would go unaffected; southern Nevada could expect sustained job losses and increasing population outmigration. Simply put, if the Nevada Supreme Court's ruling is ultimately viewed by the market as putting at risk the sustainability of southern Nevada's water resources, this would not only impair southern Nevada ability to rebound from the current recession, but it may very well do severe damage to the state economy into the foreseeable future.

Should you have any questions or should you require any additional information from me, please do not hesitate to call or write.

Respectfully,

Jeremy A. Aguero
Principal Analyst

LEGAL DRAFT

SUMMARY—Amends provisions governing the approval or rejection of certain applications by the State Engineer. (BDR 48-46)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

AN ACT relating to water; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Digest goes here.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 18 of chapter 474, Statutes of Nevada 2003, at page 2989, is hereby amended to read as follows:

Sec. 18. The amendatory provisions of section 2 of this act apply to:

1. Each application described in NRS 533.370 that is made on or after July 1, 2003; ~~[and]~~

LEGAL DRAFT

2. Each such application *described in NRS 533.370* that is pending with the office of the State Engineer on July 1, 2003 [.] *; and*

3. Except as otherwise provided in this subsection, each application described in NRS 533.370 that was filed with the office of the State Engineer before July 1, 2003, if the State Engineer did not act upon the application within 1 year after the final date for filing a protest and thereafter did not approve or reject the application before July 1, 2003. Notwithstanding any other statute to the contrary, before the State Engineer approves or rejects such an application pursuant to NRS 533.370, the State Engineer and the applicant shall comply with the provisions of NRS 533.360 to 533.369, inclusive, in the same manner as an originally filed application. The provisions of this subsection are intended to require the State Engineer to re-notice each such application and reopen the period during which interested persons may file protests. The provisions of this subsection are intended to apply retrospectively and have a retroactive effect, but they are not intended to change, alter, modify or abrogate the priority of any application.

Sec. 2. If an application described in NRS 533.370 was filed with the office of the State Engineer before July 1, 2003, and the State Engineer did not act upon the application within 1 year after the final date for filing a protest, but thereafter the State Engineer approved the application before July 1, 2003, the State Engineer's failure to act upon the application within 1 year after the final date for filing a protest does not affect the validity of the approval granted, and such a failure to act may not be used to challenge, contest or dispute the validity of the approval granted.

LEGAL DRAFT

Sec. 3. 1. The provisions of chapter 533 of NRS must not be interpreted or applied in a manner that conflicts with the provisions of this act.

2. If there is a conflict between provisions of chapter 533 of NRS and the provisions of this act, the provisions of this act control.

Sec. 4. 1. This act becomes effective upon passage and approval.

2. This act is intended to apply retrospectively and have a retroactive effect.

Section 1. Section 18 of chapter 474, Statutes of Nevada 2003, at page 2989, is hereby amended to read as follows:]

Sec. 18.....

3...

The provisions of this subsection are intended to apply retrospectively and have a retroactive effect, but they are not intended to change, alter, modify or abrogate the priority of any application[.], or any permit, order, or ruling issued by the State Engineer for which the statutory appeal period under NRS 533.450 has expired.

Committee of the Whole in recess at 9:47 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 11 p.m.
Chair Buckley presiding.
Quorum present.
BDR 31-43 discussed.

CHAIR BUCKLEY

Let's take up consideration of BDR 31-43. We have asked Assemblywoman Smith to walk us through the measure. Obviously we have been discussing and debating variations of it for four days, so we will probably do a summary review and then open it up for any questions or comments. Then of course, we can do debate on General File. So with that, Assemblywoman Smith, would you like to begin?

ASSEMBLYWOMAN SMITH:

Thank you, Madam Chair. As you said, we have already been through many of the issues that are on the sheet. You have the legal size sheet that is the corresponding document for this bill draft. I would like to note that we have found a couple of issues in here, so staff is working to correct those issues. There are some Secretary of State fees in here that were not part of the budget resolution, so those are being eliminated and staff is working on correcting the sheet. You have noted as you have gone through the bill that those are scattered throughout the bill.

There is also one issue with the Athletic Commission that an adjustment is being made on, in accordance with the budget agreement, so that is being corrected. It doesn't affect the dollar amount; it is just a language change and a change to the percentage on the fees. So I thought since you have all had a chance to look at the document and some of the language that goes along with it, we would sort of just talk generally about what the document accomplishes and then—our staff is actually out making the budget corrections. If you have any technical questions, we can note those and come back to them, or if you have any general questions that any of the committee members, or people who have worked on these items, can answer, we can do that at the present time.

On the budget sheet, if you just walk through the revenue section on line 10, you see the additional dollars added for the additional mining revenue and the detail of that is on page 80 in section 47. That has been thoroughly checked by the people who have worked on that, and I think the other house has already heard this section of the bill, and we haven't found any issues there. Mr. Oceguera has worked on that, so if there are any questions, he is here.

I think the revenue issues are pretty self-explanatory. If you go down through the solutions, you can see the total of the budget reductions proposed by the Governor and we have been through those. We have been through the discussions, for example, on Corrections and Education and Health and Human Services, so you have already seen that whole list of the Governor's proposed cuts. If you go down to line 24 and on down, you will be able to see where items have been added back in, in accordance with the agreement that has been negotiated.

I am just going to keep going, Madam Speaker, if you want to stop me, you can do that.

CHAIR BUCKLEY

No, let's go through the whole thing, and then we will open it up.

ASSEMBLYWOMAN SMITH:

So then you can see through line 34, all of the restorations, line 35 is reductions in state purchasing contracts; that line is one that we have requested that all agencies review their contracts and try to negotiate a reduction in those contracts to bring some additional revenue into the budget. Also, it is a bit of a shared sacrifice for the people who we have contracts with—they are reducing their own budgets and salaries, in accordance with what we have already experienced at the state level.

You can go down and see the higher education budget and restoration, reductions in the office of the Secretary of State, Treasurer, Controller, Legislative Counsel Bureau; these are all just on down the line—various reductions and reversions. If you go down to line 55, you start seeing some revenue that is added to the sheet from various funds and transfer of dollars. There is tax amnesty that will be offered in an attempt to recapture some of the tax dollars that are owed, collection of outstanding insurance premium tax; we have all heard about the outstanding amount there that we believe we can collect a portion of. Line 60, the School District Capital Fund, and line 61, the Clean Water Coalition Fund, and then line 64, the fund sweeps, and we have already been through that, so we have already passed that bill for $197 million.

On line 66, you start with the additional money that is coming from the federal government, with FMAP money and some of the "clawback" money, and some rearranging, if you will, of ARRA funds on line 70 and 71, which is really all about cash flow, to get us through this biennium. On the next page, under Revenues and Fees, we also have the attachment that we have previously discussed on fees. Your further reductions are at the bottom. As I said, we are working on a new sheet for you, just to reflect those few fees in the Secretary of State's Office that amounts to $589,065 that will be adjusted on the sheet to take the increases off, so you will have a new bill for that.

Madam Chair, throughout the bill, there are various descriptions of how these changes will take place. There are several statute changes required to transfer money or to direct, for instance, how the contract reductions can take place, and how the various increases are handled, so I think it would probably be easiest if our members asked questions, if they have questions. We have gone through this with staff obviously multiple times, Legal, Fiscal, and Administration. We have had contact from several interest groups who found things like the Athletic Commission, or the Secretary of State; it looks like those are our problems.

So I will stop there and entertain questions if I may answer them, or ask our staff to, Madam Chair.

CHAIR BUCKLEY:

Thank you, Assemblywoman Smith. I think you wore everybody out. Any questions; I don't see any. Assemblyman Arberry.

ASSEMBLYMAN ARBERRY:

Thank you, Madam Chair. The only question I have is that I was looking for the Casa Grande; where would we find that?

CHAIR BUCKLEY:

Casa Grande was never on the original plan for closure. It was then added. It was then removed. Because it wasn't put on initially, it didn't have to be removed. The closure of Casa Grande is not included in the budget reduction recommendations before you. The only reason I know is that I double checked at
2 A.M. last night. Assemblywoman Smith.

ASSEMBLYWOMAN SMITH:

Thank you, Madam Chair. I just wanted to clarify. I misspoke a little bit on the mining claim fee. The fee that I referred to, where you can see the language on page 80, is actually on the second page, on line 76. The mining revenue on page 10 is just additional revenue that is coming in under net proceeds.

CHAIR BUCKLEY:

Okay, other questions? So the Chair would entertain a motion to introduce a bill draft with those suggested changes on the Secretary of State fees and the Athletic Commission's.

	A	C	E	G
1	**State Of Nevada**			
2	**Projected General Fund Shortfall**			
3	**With Proposed Solutions**			
4	**2009 - 2011 Biennium**			
5				
6		**As of February 27 at 10:00 PM**		
8	**Shortfall:**	**FY 2010**	**FY 2011**	**Total**
9	General Fund Revenue	$ (234,473,496)	$ (352,958,806)	$ (587,432,302
10	Additional Net Proceeds of Minerals Receipts	$ 31,700,000	$ 27,100,000	$ 58,800,000
11	Additional Unclaimed Property Receipts	$ 4,081,000	$ 15,000,000	$ 19,081,000
12	Additional Secretary of State Fees	$ 1,080,714	$ 3,208,393	$ 4,289,107
13	General Fund Reversions	$ (7,100,000)	$ (10,500,000)	$ (17,600,000
14	Distributive School Account Shortfall	$ (84,020,858)	$ (122,694,466)	$ (206,715,324
15	Medicaid Caseload Shortfall	$ (28,371,212)	$ (32,507,446)	$ (60,878,658
16	Eliminate Line of Credit	$ (15,000,000)	$ -	$ (15,000,000
17	Move Line of Credit to FY 2011	$ (15,000,000)	$ 15,000,000	$ -
18	**Projected Shortfall 2009-11 Biennium**	**$ (347,103,852)**	**$ (458,352,325)**	**$ (805,456,177**
21	**Solutions:**			
22	**Reductions to Operating Appropriations:**			
23	Budget reductions proposed by the Governor (February 21st cut list)	$ 82,516,181	$ 191,420,860	$ 273,937,041
24	Less Restoration of Portion of HHS Reductions	$ -	$ (25,118,215)	$ (25,118,215
25	Less Prevention/Treatment of Problem Gambling (included in fund sweeps)	$ -	$ (1,842,082)	$ (1,842,082
26	Less Restoration of Portion of K-12 Reductions (decreases K-12 reduction to 6.9%)	$ (13,604,920)	$ (2,537,411)	$ (16,142,331
27	Less Restoration of Nevada Equal Rights Commission Reductions	$ -	$ (660,890)	$ (660,890
28	Less Restoration of Nevada State Prison	$ (487,147)	$ (12,330,386)	$ (12,817,533
29	Less Restoration of Department of Corrections Pay Differentials, Uniform Allowance	$ (1,320,048)	$ (5,132,178)	$ (6,452,226
30	Less Restoration of Portion of GCB Reductions (positions, credential pay, training)	$ (183,500)	$ (2,595,745)	$ (2,779,245
31	Less Restoration of Water Resources Reductions (restores 5 positions)	$ -	$ (491,737)	$ (491,737
32	Less Restoration of Cultural Affairs Reductions (restores 4 positions,bookmobile,grants)	$ -	$ (423,311)	$ (423,311
33	Less Restoration of Judicial Discipline Commission	$ (51,576)	$ (43,496)	$ (95,072
34	Less Restoration of Ofc. Of Consumer Health Assistance Reductions	$ -	$ (60,663)	$ (60,663
35	Reductions in State Purchasing Contracts	$ -	$ 10,300,000	$ 10,300,000
36	Reduction - Nevada System of Higher Education	$ 16,701,712	$ 50,105,007	$ 66,806,719
37	Less Restoration of Portion of NSHE Reductions (decreases NSHE reduction to 6.9%)	$ (5,177,530)	$ (15,532,553)	$ (20,710,083
38	Reduction - Secretary of State (updated per 2-19-10 response)	$ 63,366	$ (300,000)	$ (236,634
39	Reduction - Office of State Treasurer	$ 40,964	$ 122,126	$ 163,090
40	Reduction - Office of State Controller (updated per 2-17-10 response)	$ 146,106	$ 398,758	$ 544,864
41	Reduction - Legislative Counsel Bureau	$ 1,003,146	$ 2,939,661	$ 3,942,807
42	Legislative Counsel Bureau Session Expenses	$ -	$ (734,916)	$ (734,916)
43	Reduction - Supreme Court	$ 235,285	$ 820,355	$ 1,055,640
44	Nevada Check Up Surplus Due to Lower Than Projected Caseload	$ 1,611,578	$ 4,561,940	$ 6,173,518
45	Additional Savings in the Incentives for Licensed Educational Personnel	$ -	$ 1,500,000	$ 1,500,000
46	Savings in Department of Education Indirect Costs	$ 56,570	$ 159,118	$ 215,688
47	Salary Adjustment Account Reversions		$ 8,089,065	$ 8,089,065
48	EBO Other Recommended Reductions (less items separately identified and school support teams)	$ 1,855,053	$ 4,424,739	$ 6,279,792
49	EBO Recommended Travel and Training Reductions (adjustment for non-General Fund amount)	$ 569,491	$ 748,285	$ 1,317,776
50	EBO Recommended Vacant Position Eliminations	$ 1,358,735	$ 4,619,910	$ 5,978,645
51	Voluntary Retirements	$ -	$ 5,000,000	$ 5,000,000
52	Clark County Redevelopment Authority Funds Offset to FMWCC Debt Repayment	$ 2,346,250	$ -	$ 2,346,250
53	**Total Reductions to Operating Appropriations**	**$ 87,679,716**	**$ 217,406,241**	**$ 305,085,957**
54				
55	**Revenue Collections, Redirections & Fund Transfers**			
56	Public Employees Benefits Program - REGI Investments	$ 6,900,000	$ 7,860,000	$ 14,760,000
57	Suspend Unclaimed Property Transfer to Millennium Scholarship Fund	$ 3,800,000	$ 3,800,000	$ 7,600,000
58	Tax Amnesty	$ -	$ 10,000,000	$ 10,000,000
59	Collect Outstanding Insurance Premium Tax	$ -	$ 10,000,000	$ 10,000,000
60	Clark County School District Capital Projects	$ -	$ 25,000,000	$ 25,000,000
61	Clean Water Coalition Funds	$ -	$ 62,000,000	$ 62,000,000
62	**Total Revenue Collections, Redirections & Fund Transfers**	**$ 10,700,000**	**$ 118,660,000**	**$ 129,360,000**
63				
64	**Fund Sweeps (see attachment)**	**$ 123,534,998**	**$ 73,868,572**	**$ 197,403,570**
65				
66	**Federal Fund offsets**			
67	Additional FMAP Funds	$ -	$ 88,488,706	$ 88,488,706
68	Enhanced FMAP rate - State "Clawback" payments	$ 4,839,939	$ 11,705,027	$ 16,544,966
69	TANF Emergency Contingency Funds Replacing General Funds	$ -	$ 9,269,929	$ 9,269,929
70	Transfer Department of Corrections ARRA funds	$ 72,178,069	$ (72,178,069)	$ -
71	Transfer NSHE ARRA Funds	$ 92,389,311	$ (92,389,311)	$ -
72	**Total Federal Fund offsets**	**$ 169,407,319**	**$ (55,103,718)**	**$ 114,303,601**

LCB Fiscal 2/28/201011:11 PM

	A	C	E	G
1	**State Of Nevada**			
2	**Projected General Fund Shortfall**			
3	**With Proposed Solutions**			
4	**2009 - 2011 Biennium**			
5				
6		**As of February 27 at 10:00 PM**		
73				
74	**Revenues and Fees**			
75	Fee Increases in State Agencies (refer to attachment)	$ -	$ 26,978,734	$ 26,978,734
76	Mining Claim Fee Increase	$ -	$ 25,700,000	$ 25,700,000
77	**Total Revenues and Fees**	**$ -**	**$ 52,678,734**	**$ 52,678,734**
78				
79	**Other Reductions:**			
80	Spend Down General Fund Ending Balance	$ -	$ 4,963,635	$ 4,963,635
81	Additional CIP Reversions	$ 2,141,638	$ -	$ 2,141,638
82	**Total Other Reductions**	**$ 2,141,638**	**$ 4,963,635**	**$ 7,105,273**
83				
84	**Total Solutions to Projected Shortfall**	**$ 393,463,671**	**$ 412,473,464**	**$ 805,937,135**
85		**$ 46,359,819**	**$ (45,878,861)**	**$ 480,958**

Fee Offsets for General Fund Appropriations

AGENCY NAME	GENERAL FUND APPROPRIATION 2009-10	GENERAL FUND APPROPRIATION 2010-11	Proposed Fees	EXPLANATION	FEES IN STATUTE OR NAC
SECRETARY OF STATE'S OFFICE					
SECRETARY OF STATE	$11,005,044	$11,253,706	$3,668,169	Increases securities sales representative fees, commercial recordings fees, and other fees effective March 1, 2010.	Fees are specified in statute.
SUPREME COURT					
SUPREME COURT	$5,463,464	$4,923,489	$2,310,530	Increases each administrative assessment for misdemeanors by $5.	Current AA fee schedule for misdemeanors is in NRS 176.059. Legislation is needed to ensure the increased ($5) AA fee would be deposited directly to the General Fund versus being divided between Judicial and Executive Branches pursuant to NRS 176.059.
LEGISLATURE					
LEGISLATIVE COUNSEL BUREAU			$100,000	Increase in lobbyist registration fee. [Approximately 635 registered lobbyists @ $180/each. Current fee is $100.]	
DEPARTMENT OF CULTURAL AFFAIRS					
DCA - LOST CITY MUSEUM	$318,077	$323,125	$18,758	Increase in admissions fee per person to offset a portion of the General Fund appropriation.	Board of Museums and History establishes the fee amounts pursuant to NRS 381.0045.
DCA - NEVADA HISTORICAL SOCIETY	$490,147	$493,256	$2,430	Increase in admissions fee per person to offset a portion of the General Fund appropriation.	Board of Museums and History establishes the fee amounts pursuant to NRS 381.0045.
DCA - NEVADA STATE MUSEUM, CARSON CITY	$1,118,468	$1,067,085	$56,608	Increase in admissions fee per person to offset a portion of the General Fund appropriation.	Board of Museums and History establishes the fee amounts pursuant to NRS 381.0045.
DCA - NEVADA STATE MUSEUM, LAS VEGAS	$900,105	$911,363	$4,862	Increase in admissions fee per person to offset a portion of the General Fund appropriation.	Board of Museums and History establishes the fee amounts pursuant to NRS 381.0045.
DCA - STATE RAILROAD MUSEUMS	$852,384	$844,542	$112,866	Increase in admissions fee per person to offset a portion of the General Fund appropriation.	Board of Museums and History establishes the fee amounts pursuant to NRS 381.0045.
DEPARTMENT OF HEALTH AND HUMAN SERVICES					
HHS - HEALTH STATISTICS AND PLANNING	$840,149	$852,045	$368,511	Increase Vital Statistics Fees for birth and death certificates and for copies of certificates.	NRS 440.700 (main list of fees); NRS 440.175 (3) (remittances from counties); NRS 440.890 (children's accounts and county coroner support)
GAMING CONTROL BOARD					
GAMING CONTROL BOARD	$31,214,314	$31,420,650	$4,200,000	Increase in Gaming Control Board investigative fees (from $60/hourly to $150/hourly) to offset portion of General Fund appropriation.	
DEPARTMENT OF CONSERVATION & NATURAL RESOURCES					
DCNR - STATE PARKS	$5,310,891	$5,296,736	$1,086,000	Increase State Parks user fees to offset portion of General Fund appropriation.	NAC 407.050 - 407.080
DEPARTMENT OF BUSINESS AND INDUSTRY					
B&I - ATHLETIC COMMISSION	$550,850	$554,589	$1,250,000	Increase in gate fee from 4% to 5% and broadcast fee from 3% on first $1 million to 3% on first $4 million.	NRS 467.104-108; NAC 467.012-073
OTHER					
NOTICE OF DEFAULT FEE			$13,800,000	Current statutory fee of $50 funds the foreclosure remediation program. Proposed fee increase adds $150 with the additional funds directed to the State General Fund.	NRS 107.080
		TOTAL:	$26,978,734		

Assemblywoman Smith moved to introduce BDR 31-43.
Seconded by Assemblywoman Gansert.
Motion carried.

Chair Buckley announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Committee of the Whole in recess at 11:13 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 11:18 p.m.
Chair Buckley presiding.
Quorum present.

CHAIR BUCKLEY:

Should I tell everybody about this latest idea or wait to see when you come back? Assemblywoman Kirkpatrick and I were just talking about this idea, and maybe it doesn't work at all, but just throw it out there.

On the water issue, the idea was is there any way to make the issue on the priority clear now in legislation so we don't have to come back in a special session since they're not that special? And then direct the water engineer, through regulations, to come up with ways to deal with the priorities of full hearings with regard to applications so the current folks affected by a project can weigh in without jeopardizing the northern Nevada issues, and then, of course, you'd have the backstop of the Legislative Commission to make sure they don't get it wrong. Don't know if that's even possible, and it might be too late to figure it out, but it was just a suggestion that is going to be discussed with Kevin Powers. It's just a lot to decide in a very little amount of time, but we all recognize the importance of it, but I just thought I'd plant that seed. It may not go anywhere but we need to think of solutions that make sense for everybody.

Assemblyman Mortenson?

ASSEMBLYMAN MORTENSON:

If we do it as a resolution, it won't hold. The courts will probably at least look at it, but it doesn't really hamstring anything if we get it wrong.

CHAIR BUCKLEY:

Also, as one of our lawyers pointed out to me, our own Assembly representative sitting so quietly up there in the corner, the courts probably have already paid a lot of attention to everything we've already said, and so that might be helpful, as well. We'll bring it up and have a debate on it and figure out how we want to process it in a way that makes sense.

But in the meantime, we're going to do a couple other floor businesses while we await the BDR.

On motion of Assemblyman Oceguera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 11:27 p.m.
Madam Speaker presiding.
Quorum present.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 28, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bill No. 2.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Senate Bill No. 4.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 1.

Resolution read.

The following amendment was proposed by the Committee of the Whole:

Amendment No. 9.

SENATE CONCURRENT RESOLUTION—Urging local government employers and local government employee organizations to mutually address the impacts of the budget shortfall.

WHEREAS, The continued downturn in the national economy has had a dramatic negative impact on the economy of the State of Nevada, including creating the highest unemployment rate in the history of the State and one of the highest unemployment rates in the country, causing many people to lose their health insurance benefits, placing a burden on the social services provided in the State and forcing many businesses to close and families to lose their jobs and homes; and

WHEREAS, The 2009 Session of the Nevada Legislature addressed what was then a looming budget gap by making cuts to the State's budget of about $1 billion, implementing temporary tax increases amounting to an estimated $781 million and imposing furlough requirements on state employees which amounted to a 4.6 percent temporary reduction in salaries; and

WHEREAS, Because recent projections yield an unprecedented budget shortfall of nearly $900 million, the Legislature has been called into this Special Session to deal with this dire fiscal emergency; and

WHEREAS, The Legislature has a constitutional duty to balance the State's budget and therefore is making careful but difficult decisions that include consideration of steep reductions in almost every major governmental program, additional furlough hours for state employees and deviation from the required hours of operation for both state and local governments; and

WHEREAS, The support and services provided by local governments in Nevada is critical, and there must be awareness that without consideration of temporary reductions to salaries, massive layoffs will occur through

negotiated agreements and further cuts will have to be made to these vital public services; and

WHEREAS, It is in the best interest collectively for the State and the local governments to recognize the "shared sacrifice" we all must make to ensure further layoffs will not happen, as those layoffs would in turn have a further negative impact on the State's unemployment rate and mortgage crisis; ~~[now, therefore, be it]~~ **and**

WHEREAS, In recognition of this "shared sacrifice," the local government employees have risen to the occasion by making concessions during this difficult time; and

WHEREAS, The process of local government collective bargaining in this State historically has been conducted between employers and employees and does not provide an opportunity for the public to raise meaningful questions and offer input; and

WHEREAS, A collective bargaining process that allows for more transparency would benefit the public for a better understanding of the process and outcome of the negotiated agreement; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislature hereby urges local government employers and local government employee organizations to recognize the difficult task with which this Legislature is faced and to recognize the "shared sacrifice" that is necessary to reduce the impact of the crippling budget shortfall on this State; and be it further

RESOLVED, That these employers and employee organizations are hereby urged to rise to the challenge by recognizing that desperate times call for desperate measures and that now is the time to think outside the box and consider ways to come mutually to the bargaining table outside the clogged bureaucratic process and cooperatively address the budget shortfall in an effort to avoid massive layoffs and cuts to vital public services; and be it further

RESOLVED, That this Special Session of the Legislature hereby urges the 2011 Regular Session of the Legislature to examine the current process of local government collective bargaining and contract negotiations in this State with the goal of increasing the transparency to provide the public with a meaningful opportunity to hold local governments and local government employee organizations accountable; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to local government employers of this State and the local government employee organizations in this State.

Assemblywoman Gansert moved the adoption of the amendment.

Remarks by Assemblywoman Gansert.

Assemblyman Oceguera requested that her remarks be entered in the Journal.

ASSEMBLYWOMAN GANSERT:

Thank you, Madam Speaker. I believe we all know how important transparency is and, in fact, during the last legislative session, the Majority Leader made great efforts in transparency of collective bargaining agreements, or worked towards that end.

I asked for this amendment because I have realized over time how much money the taxpayers are spending through collective bargaining agreements, and I asked for a little bit of research on that. Just to put it into prospective, if you were to take the 17 school districts in this state and the total expenditures of $3.4 billion, 83 percent of that is on salary, which comes out to about $2.9 billion. Now all of that may not be through collective bargaining agreements, but probably the majority of it is.

Also, in the cities of Reno and also Las Vegas, about 72 percent of what they spend is on personnel. Clark County is about 65 percent and Washoe is about 75 percent. It is apparent that we have a great deal of money that is being spent through collective bargaining agreements, and that it is critically important that we open these agreements to the public, so I offer this amendment to urge that the legislative body look into a more open and transparent process for collective bargaining agreements during the next legislative session. I urge your support.

Amendment adopted.

Resolution ordered to the Resolution File.

Senate Concurrent Resolution No. 1.

Assemblyman Oceguera moved the adoption of the resolution.

Remarks by Assemblyman Oceguera.

Resolution adopted and ordered transmitted to the Senate.

Assemblyman Oceguera moved that the February 28, 2010 legal opinion of the Legislative Counsel regarding the length of a special session convened by the Governor pursuant to Article 5, Section 9 of the Nevada Constitution be placed in the journal.

Remarks by Assemblyman Oceguera.

Motion carried.

February 28, 2010

Lorne J. Malkiewich
Director of the Legislative Counsel Bureau
Legislative Building
401 S. Carson Street
Carson City, NV 89701

Dear Director Malkiewich:

You have asked this office a question relating to the length of a special session convened by the Governor pursuant to Article 5, Section 9 of the Nevada Constitution. In particular, you have asked whether the Governor possesses any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

After reviewing extensive historical evidence and persuasive legal authorities and after applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor does not possess any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

Furthermore, because this issue involves the interpretation of a doubtful or uncertain constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the doubtful or uncertain constitutional

provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

Finally, we note that the Governor may recommend to the Legislature a time limit on the length of a special session when the Governor issues the proclamation calling the special session. Likewise, once the Legislature has convened in a special session, the Governor may issue a supplemental proclamation or message recommending to the Legislature a date and time for the Legislature to adjourn *sine die*. In either circumstance, the Legislature may voluntarily follow the Governor's recommendation in the spirit of mutual cooperation with a coordinate branch of government. However, given the plenary power of the Legislature to control the length of its legislative sessions, any recommendation from the Governor concerning the length of the special session would not be binding or enforceable on the Legislature, and the Legislature would be free to determine its own date and time to adjourn *sine die* regardless of any recommendation from the Governor.

BACKGROUND

Under Article 5, Section 9 of the Nevada Constitution, the Governor is authorized to convene a special session of the Legislature by proclamation. However, Article 5, Section 9 does not contain any language relating to the length of a special session convened by the Governor.

When the Nevada Constitution was adopted in 1864, Article 4, Section 29 limited the length of both regular sessions and special sessions. In particular, Article 4, Section 29 provided that "[t]he first regular session of the Legislature, under this Constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days."

At the general election held in 1958, the voters repealed Article 4, Section 29 and the constitutional limits on the length of regular sessions and special sessions. Forty years later in 1998, the voters adopted another constitutional limit on the length of regular sessions which limits the length of regular sessions to 120 calendar days. Nev. Const. art. 4, § 2. However, the voters have not adopted another constitutional limit on the length of special sessions.

On February 16, 2010, Governor Jim Gibbons issued a proclamation to convene a special session of the Legislature to consider certain matters relating to the state budget. The Governor's proclamation did not contain a time limit on the length of the special session. In accordance with the Governor's proclamation, the Legislature convened the 26th Special Session on February 23, 2010.

After the Legislature convened the special session, the Governor exercised his power under Article 5, Section 9 to call additional legislative business to the attention of the Legislature by issuing a "First Amended Proclamation" on February 24, 2010. In addition to identifying additional legislative business that may be considered by the Legislature at the special session, the Governor's First Amended Proclamation also attempts to place a time limit on the length of the special session as follows: "The Special Session shall end no later than 11:59 P.M. Pacific Standard Time on Sunday, February 28, 2010."

Given that the Governor has attempted to place a time limit on the length of the special session, you have asked whether the Governor possesses any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

There are no reported cases from the Nevada Supreme Court which address this issue. However, on June 12, 2001, Frankie Sue Del Papa, then Nevada's Attorney General, issued an opinion (AGO 2001-14) which interpreted the provisions of Article 5, Section 9 and opined that the Governor possesses implied constitutional power to establish a binding and enforceable time limit on the length of a special session. Specifically, AGO 2001-14 stated in pertinent part:

> [I]t is our opinion that a Nevada Governor's exercise of extraordinary, exclusive and discretionary power to convene a special session and to specify the subjects for consideration at such session necessarily includes the discretionary authority to revoke or amend a proclamation convening such

> special session. Included within such power to revoke would be the authority to specify within the proclamation a specific time period during which the proclamation shall remain in force and effect. Accordingly, it is our opinion that the Governor possesses authority to specify a durational time limit for such special session.

Op. Nev. Att'y Gen. No. 2001-14 (June 12, 2001).

As we will explain in more detail below, we believe AGO 2001-14 is flawed because it is not supported by sound legal reasoning or citation to persuasive legal authority and it fails to properly apply the rules of constitutional construction in evaluating the constitutional balance of power between the Legislature and the Governor regarding the length of a special session. Because we disagree with AGO 2001-14, we believe it will be helpful to provide a brief discussion regarding the persuasive weight that courts give to the opinions of the Attorney General and the opinions of the Legislative Counsel.

The Attorney General has been designated by statute as the legal adviser on all matters arising within the Executive Department of the State Government. NRS 228.110. As the legal adviser to the Executive Department, the Attorney General is required by statute to issue an opinion upon any question of law when such an opinion is requested by certain officers and agencies within the Executive Department. NRS 228.150.

Although the Attorney General is authorized to issue opinions upon questions of law, the Nevada Supreme Court has held that an opinion of the Attorney General does not constitute binding legal authority or precedent. Univ. and Cmty. College Sys. of Nev. v. DR Partners, 117 Nev. 195, 203 (2001); Blackjack Bonding v. City of Las Vegas Mun. Ct., 116 Nev. 1213, 1218 (2000); Goldman v. Bryan, 106 Nev. 30, 42 (1990). As a result, an opinion of the Attorney General is entitled only to such persuasive weight as the court thinks proper based on the soundness of its legal reasoning and the citation to authority that supports the opinion. As explained by the United States District Court for the District of Nevada:

> In Nevada an opinion of the Attorney General is given whatever weight the Court thinks it deserves when the issue on which the opinion bears is before the Court for determination. . . .It is only in unusual circumstances that an Attorney General's opinion will control the outcome of a case.

Tahoe Reg'l Planning Agency v. McKay, 590 F. Supp. 1071, 1074 (D. Nev. 1984) (emphasis added), aff'd, 769 F.2d 534 (9th Cir. 1985).

Thus, an opinion of the Attorney General does not have the force or effect of law, and it is not binding on any state officer. See Op. Nev. Att'y Gen. No. 1911-15 (Apr. 27, 1911). Rather, such an opinion is merely advisory, and it is entitled only to such persuasive weight as the court thinks proper based on the soundness of its legal reasoning and the citation to authority that supports the opinion.

The Legislative Counsel has been designated by statute as the legal adviser on all matters arising within the Legislative Department of the State Government. NRS 218.695 & 218.697.[1] As the legal adviser to the Legislative Department, the Legislative Counsel is required by statute to issue an opinion upon any question of law when such an opinion is requested by any member or committee of the Legislature or the Legislative Commission. NRS 218.695. The Attorney General is not statutorily authorized to render an opinion to a member of the Legislature, and the

[1] As part of the 2009 codification and reprint of the Nevada Revised Statutes, the provisions of NRS Chapter 218 ("State Legislature") have been reorganized into NRS Chapters 218A to 218H, inclusive, and NRS 218.695 and 218.697 have been recodified as NRS 218F.710 and 218F.720.

duty to provide a legal opinion to a member of the Legislature falls upon the Legislative Counsel. See Op. Nev. Att'y Gen. No. 2002-36 (Oct. 4, 2002).

An opinion of the Legislative Counsel is entitled to the same persuasive weight as an opinion of the Attorney General. See Cable v. State ex rel. EICON, 122 Nev. 120, 126-27 (2006); Cal. Ass'n of Psychology Providers v. Rank, 793 P.2d 2, 11 (Cal. 1990). Thus, an opinion of the Legislative Counsel is entitled to such persuasive weight as the court thinks proper based on the soundness of its legal reasoning and the citation to authority that supports the opinion. See Cable, 122 Nev. at 127; Santa Clara County Local Transp. Auth. v. Guardino, 902 P.2d 225, 236 (Cal. 1995); Grupe Dev. Co. v. Superior Ct., 844 P.2d 545, 551 (Cal. 1993). Furthermore, the Nevada Supreme Court has held that when the meaning of a constitutional provision affecting legislative procedure is in doubt or subject to uncertainty, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 540 (2001).

In sum, the opinions of the Attorney General and the Legislative Counsel do not constitute binding legal authority or precedent and do not have the force or effect of law. Rather, the persuasive weight to be given to the opinions must be judged by the soundness of the legal reasoning and the citation to authority that supports the opinions. Furthermore, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets a doubtful or uncertain constitutional provision affecting legislative procedure, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. With this background in mind, we turn now to answering your question.

DISCUSSION

To determine whether a public officer or agency has the power to act under a constitutional or statutory provision, the Nevada Supreme Court typically employs a two-step process. See Clark County Sch. Dist. v. Clark County Classroom Teachers Ass'n, 115 Nev. 98, 101-04 (1999); Andrews v. Nev. State Bd. of Cosmetology, 86 Nev. 207, 208-10 (1970). First, the court examines the plain language of the provision and asks whether the officer or agency has been given the express power to act. Id. If the provision does not provide the officer or agency with the express power to act, the court then asks whether the power to act arises by necessary implication. Id. We believe the court would follow the same approach to determine whether the Governor has any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

I. The Governor does not possess any express constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

Under Article 5, Section 9 of the Nevada Constitution, the Governor has been given the express power to convene a special session of the Legislature by proclamation. Specifically, Article 5, Section 9 provides that:

> The Governor may on extraordinary occasions, convene the Legislature by Proclamation and shall state to both houses when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business, except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session.

Based on the plain language of Article 5, Section 9, that constitutional provision does not contain any language which expressly authorizes the Governor to establish a binding and enforceable time limit on the length of a special session when the Governor issues the proclamation calling the special session. Similarly, Article 5, Section 9 does not contain any

language which expressly authorizes the Governor to terminate a special session once it has convened. After a careful review of the Nevada Constitution, we have not found any other constitutional provision which contains language expressly authorizing the Governor to exercise such power. In the absence of express constitutional language, it is the opinion of this office that the Governor does not possess any express constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

II. The Governor does not possess any implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

There are no reported cases from the Nevada Supreme Court which address the issue of whether the Governor possesses any implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened. Because there is no controlling legal precedent from the Nevada Supreme Court on this issue, we must turn to the rules of constitutional construction and to legal authority from other sources to guide us in answering your question.

When interpreting the provisions of the Nevada Constitution, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). In applying those rules of construction, the court has indicated that its primary task is to ascertain the intent of the Framers and to adopt an interpretation that best captures their objective. Id. As explained by the court, "[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law." State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883).

The Framers intended for the provisions of the Nevada Constitution to work together as a unified whole. See State ex rel. Herr v. Laxalt, 84 Nev. 382, 385-86 (1968). Consequently, the Nevada Constitution must be interpreted in its entirety, and each provision of the Constitution must be given meaning and effect and harmonized with the other provisions of the Constitution. We the People Nev. v. Miller, 124 Nev. Adv. Op. 75, 192 P.3d 1166, 1171 (2008).

Accordingly, to determine the scope of the Governor's constitutional power regarding the length of a special session, we must interpret the provisions of Article 5, Section 9 in harmony with all other relevant provisions of the Nevada Constitution. To that end, we must consider the Governor's power under Article 5, Section 9 in light of the constitutionally mandated separation of powers in Article 3, Section 1 of the Nevada Constitution.

A. Separation of powers.

In Nevada, "[t]he doctrine of separation of powers is fundamental to our system of government." Dunphy v. Sheehan, 92 Nev. 259, 265 (1976). The constitutional source of this doctrine is Article 3, Section 1 of the Nevada Constitution, which establishes a tripartite system of state government and which firmly fixes the principle of separation of powers in the organic law of this state. Galloway v. Truesdell, 83 Nev. 13, 19 (1967). The separation-of-powers provision in Article 3, Section 1 provides in relevant part:

> The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

(Emphasis added.)

In creating a tripartite system of state government, the Nevada Constitution expressly vests the state's legislative power in the Legislature. Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op.

27, 212 P.3d 1098, 1103 (2009). Specifically, Article 4, Section 1 of the Nevada Constitution provides that "[t]he Legislative authority of this State shall be vested in a Senate and Assembly which shall be designated 'The Legislature of the State of Nevada.'"

Because the legislative power of this state is vested in the Legislature, the Governor may not exercise legislative power unless the Governor's exercise of that power is expressly permitted by the Constitution. See State of Nev. Employees Ass'n v. Daines, 108 Nev. 15, 21 (1992); Galloway v. Truesdell, 83 Nev. 13, 20-21 (1967). Thus, if the Constitution does not expressly permit the Governor to exercise legislative power, the implication is that the Governor is prohibited from exercising that power at all. Stated another way, when the Constitution grants powers to a particular constitutional officer or department, "their exercise and discharge by any other officer or department are forbidden by a necessary and unavoidable implication. Every positive delegation of power to one officer or department implies a negation of its exercise by any other officer, department, or person." King v. Bd. of Regents, 65 Nev. 533, 556 (1948) (quoting State ex rel. Crawford v. Hastings, 10 Wis. 525, 531 (1860)). Consequently, when the Constitution grants a particular power exclusively to the Legislature, the Governor may not exercise that constitutional power by implication. See Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1103-05 (2009).

Furthermore, even if there exists some doubt or ambiguity as to whether the Governor or the Legislature possesses a particular constitutional power, that doubt or ambiguity must be resolved in favor of the Legislature. This rule stems from the fact that the Governor possesses only express and limited powers under the Constitution, while the Legislature possesses almost unlimited powers under the Constitution.

The office of governor did not originate under the common law. The office is primarily a creature of the American system of constitutional government. See Royster v. Brock, 79 S.W.2d 707, 709 (Ky. 1935); 38 Am. Jur. 2d Governor § 1 (1999). As a result, courts have generally found that a governor has little or no inherent power or prerogative power which arises merely by virtue of the office. See Clark v. Boyce, 185 P. 136, 138 (Ariz. 1919); City of Bridgeport v. Agostinelli, 316 A.2d 371, 376 (Conn. 1972); Royster v. Brock, 79 S.W.2d 707, 709 (Ky. 1935); Richardson v. Young, 125 S.W. 664, 669 (Tenn. 1910). Instead, a governor possesses only those express and limited powers that are granted to the office by the state constitution or by statute. Id.; Litchfield Elementary Sch. Dist. No. 79 v. Babbitt, 608 P.2d 792, 797 (Ariz. Ct. App. 1980). As explained by one court in the context of special sessions:

> [T]he calling of the General Assembly in special session is not inherently an executive function. The exercise of that power or function has been intrusted to the Governor by the Constitution, and that instrument measures the extent and limits of his power and authority. His right to convene the General Assembly in special session is a delegated and limited power, which derives from the Constitution, and he can act only in the specified manner and can exercise only the power granted to him.

Royster v. Brock, 79 S.W.2d 707, 711 (Ky. 1935).

After carefully reviewing the Nevada Constitution, we have not found any constitutional provision that would undermine this well-established body of case law. Thus, we believe the Governor of Nevada, like the governors of other states, possesses only express and limited constitutional powers that are not inherent in the office but are derived solely from the text of the Constitution.

In contrast to the Governor, the Legislature does not derive its constitutional powers from the text of the Constitution. Rather, the Legislature possesses all inherent power of the people unless that power is clearly limited by the Federal Constitution or the State Constitution. Ex parte Boyce, 27 Nev. 299, 332, 334 (1904); Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672, 675 (1988). Whereas the Governor must be able to point to express provisions of the Constitution to justify the Governor's exercise of constitutional power, the Legislature does not need express constitutional authorization to justify its exercise of constitutional power because "[t]he constitution allows the legislature every power which it does not positively prohibit."

City of Las Vegas v. Ackerman, 85 Nev. 493, 502 (1969) (quoting Sharpless v. Mayor of Phila., 21 Pa. 147 (1853)). As often noted by the Nevada Supreme Court, the power of the Legislature is extremely broad and "except where limited by Federal or State Constitutional provisions, that power is practically absolute." Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Even when the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). Additionally, because the powers of the executive and judicial branches are expressly defined by the Nevada Constitution, any power which is not clearly committed to those branches by the text of the Constitution is completely denied to them and is left exclusively to the legislative branch. See City of Pawtucket v. Sundlun, 662 A.2d 40, 44 (R.I. 1995). Therefore, because the provisions of the Nevada Constitution are to be strictly construed in favor of the power of the legislative branch, it is a fundamental rule of constitutional construction that any doubt or ambiguity concerning the constitutional powers of the executive branch must be resolved in favor of the power of the legislative branch.

In light of these well-established principles under the doctrine of separation of powers, we must resolve two issues. First, we must resolve whether the power to control the length of a special session is a legislative power or an executive power. Second, if such a power is a legislative power, we must resolve whether the Governor's exercise of that power is expressly permitted by the Constitution. For assistance in resolving these two issues, we look first to an abundance of historical evidence which establishes that the power to control the length of legislative sessions is a legislative power.

B. Historical evidence establishes that the power to control the length of legislative sessions is a legislative power.

When a constitutional provision is silent or unclear on a given issue, the Nevada Supreme Court will interpret the provision according to what history, reason and public policy would indicate the Framers intended. Miller v. Burk, 124 Nev. Adv. Op. 56, 188 P.3d 1112, 1120 (2008). The court will also interpret the provision by "taking into view the evils that were to be remedied, the dangers sought to be guarded against and the protection to be afforded." Evans v. Job, 8 Nev. 322, 333 (1873). Finally, when a constitutional provision involves legislative procedure, the court will interpret the provision with reference to the historical customs and practices of legislative and parliamentary bodies. State ex rel. Cardwell v. Glenn, 18 Nev. 34, 40-46 (1883); State ex rel. Davis v. Eggers, 29 Nev. 469, 473-75 (1907).

Based on extensive historical evidence, including grievances lodged by the American colonists in the Declaration of Independence, it is clear that the Founders of our Nation intended to impose severe limits on the power of the executive to control the length of legislative sessions. During colonial times, the royal colonial governors, acting under the authority of the King of England, possessed absolute control over the sessions of the colonial legislatures, and the royal governors could terminate legislative sessions at their pleasure or whim by virtue of their royal prerogative powers. 1 Joseph Story, Commentaries on the Constitution of the United States §§ 843-44 (5th ed. 1905) (Story); Luther S. Cushing, Elements of the Law & Practice of Legislative Assemblies §§ 495, 509-19 (9th ed. 1907) (Cushing). Inevitably, "the undue exercise of [such] power by the royal governors constituted a great public grievance, and was one of the numerous cases of misrule upon which the Declaration of Independence strenuously relied." Story at § 844. As expressed by the colonists in the Declaration of Independence:

> The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. . . . He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

Because of the English Crown's historical abuse of power in terminating legislative sessions, the Framers of the United States Constitution and almost every state constitution drafted constitutional provisions to "interpose a constitutional barrier against any such abuse by the prerogative of the executive." Story at § 844. In particular, these constitutional provisions are similar to Article 4, Section 15 of the Nevada Constitution, which provides that "neither [House] shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which they may be holding their sessions." See Story at §§ 843-44; Cushing at §§ 516-18.

Courts and commentators have concluded that such provisions mean that a legislature may be adjourned *sine die* only with the consent of both houses and that a legislature may not be adjourned *sine die* under any other circumstances, unless there is a specific and express constitutional provision to the contrary. See Taylor v. Beckham, 56 S.W. 177, 179 (Ky. 1900); Story at §§ 843-44; Cushing at §§ 448, 495, 516; see also Frame v. Sutherland, 327 A.2d 623, 626-27 (Pa. 1974); In re Opinion of the Justices No. 115, 47 So. 2d 642, 643 (Ala. 1950); In re Opinion to Governor, 85 A. 1056, 1057 (R.I. 1913). Thus, once a legislature has been convened, the general rule is that the legislature is the sole judge of how long it needs to remain in session to complete its legislative business, subject to any time limits expressly set forth in a constitutional provision. See Opinion of the Justices No. 173, 152 So. 2d 427, 428 (Ala. 1963); Wells v. Purcell, 592 S.W.2d 100, 105 (Ark. 1979); Sims v. Weldon, 263 S.W. 42, 45 (Ark. 1924); Richards Furniture Corp. v. Bd. of County Comm'rs, 196 A.2d 621, 625 (Md. 1964); Davis v. Thompson, 721 P.2d 789, 792-93 (Okla. 1986); State ex rel. Distilled Spirits Inst. v. Kinnear, 492 P.2d 1012, 1016-23 (Wash. 1972).

In sum, under the American system of constitutional government, legislatures have plenary power to determine the length of their legislative sessions, and this plenary power is exclusive and unlimited unless there are express constitutional provisions which terminate a legislative session by lapse of time or which grant the power of termination to the executive. Cushing at §§ 495, 509-19. In the absence of an express constitutional provision granting the power of termination to the executive, "the executive has no authority . . . to put an end to the session of a legislative assembly." Cushing at § 495. As explained by distinguished colonial lawyer William Rawle:

> The legislative body possesses with us a great advantage over that of those countries where it may be adjourned or dissolved at the pleasure of the executive authority. It is self-moving and self-dependent. Although it may be convened by the executive, it cannot be adjourned or dissolved by it.

William Rawle, A View of the Constitution of the United States 34-35 (2d ed. 1829).

Thus, based on a thorough examination of historical evidence, there is no support in the annals of American history to merit a conclusion that the Governor possesses implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened. To the contrary, such a conclusion would be anathema to the Founders of our Nation who disdained the unlimited executive power that royal colonial governors wielded over the length of legislative sessions.

C. Under the Nevada Constitution, the Governor may terminate a legislative session only in the case of a disagreement between the two Houses with respect to the time of adjournment.

As discussed previously, Article 5, Section 9 of the Nevada Constitution does not contain any language expressly authorizing the Governor to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened. The only power expressly conferred on the Governor with regard to the termination of a legislative session is found in Article 5, Section 11 of the Nevada Constitution, which provides that "[i]n case of a disagreement between the two Houses with respect to the time of adjournment, the Governor

shall have power to adjourn the Legislature to such time as he may think proper; Provided, it be not beyond the time fixed for the meeting of the next Legislature."

A fundamental rule of constitutional construction is *expressio unius est exclusio alterius*, which provides that the expression of one thing is the exclusion of another. Galloway v. Truesdell, 83 Nev. 13, 26 (1967). Because Article 5, Section 11 of the Nevada Constitution is the only constitutional provision which invests the Governor with the power to terminate a legislative session, it follows that the specific expression of power in Article 5, Section 11 means that the Framers intended to exclude the Governor from having the power to terminate a legislative session under any other circumstances. Stated another way, had the Framers intended to give the Governor the power to limit the length of a special session or to terminate a special session once it has convened, the Framers could have simply expressed that power in the Constitution. They did not. The only reasonable conclusion to be drawn is that the Framers did not intend for the Governor to possess such power. As aptly explained by the Washington Supreme Court:

> [T]he framers noted the power of the Governor to call special sessions. This power was not granted in article 2, dealing with the legislature and its powers, but rather in article 3, the executive article. Section 7 of that article provides that the Governor may convene the legislature upon extraordinary occasions. He is required to state the purposes for which the legislature is convened, but we find in this section no limitation placed upon the length of time which the legislature may sit to consider the matters which come before it on these occasions. It would seem safe to surmise that, if the framers had intended to limit the length of the sessions provided for in this article, they would have mentioned that limitation in the section wherein they set forth the power of the Governor to convene the legislature.

State ex rel. Distilled Spirits Inst. v. Kinnear, 492 P.2d 1012, 1022 (Wash. 1972).

This conclusion is supported by United States Supreme Court Justice Joseph Story in his renowned treatise on constitutional law, Commentaries on the Constitution of the United States. Story at §§ 843-44. In that treatise, Justice Story examined several provisions of the Federal Constitution concerning the power of the President to call special sessions and the power of the Congress to terminate its legislative sessions. Those provisions of the Federal Constitution are nearly identical to the provisions of the Nevada Constitution. U.S. Const. art. I, § 5, cl. 4 & art. II, § 3. In interpreting the meaning of the Federal Constitution, Justice Story concluded that the power of the Congress to terminate its legislative sessions is practically absolute, with the only exception being the power of the President to adjourn the Congress in case of disagreement between the Houses as to the time of adjournment:

> It is observable that the duration of each session of Congress (subject to the constitutional termination of their official agency) depends solely upon their own will and pleasure, with the single exception, as will be presently seen, of cases in which the two houses disagree in respect to the time of adjournment. In no other case is the President allowed to interfere with the time and extent of their deliberations. And thus their independence is effectually guarded against any encroachment on the part of the executive.

Story at § 843 (footnote omitted and emphasis added); see also Taylor v. Beckham, 56 S.W. 177, 179 (Ky. 1900).

When Justice Story's constitutional analysis is applied to the Nevada Constitution, it follows that the only source of constitutional power entitling the Governor to terminate a legislative session is found in Article 5, Section 11, which allows the Governor to terminate a legislative session in cases where the two Houses disagree with respect to the time of adjournment. In no other case is the Governor allowed to interfere with the time and extent of the Legislature's deliberations. Because Justice Story's constitutional analysis is consistent with the text of the

Nevada Constitution and with the fundamental rules of constitutional construction, we believe Justice Story's analysis supports the conclusion that the Governor does not possess any implied constitutional power to limit the length of a special session or to terminate a special session once it has convened.

D. By repealing the constitutional limit on the length of special sessions in 1958, the people intended to eliminate all constitutional limitations on the length of special sessions.

Another fundamental rule of constitutional construction is that the Constitution must be interpreted in a manner that best carries out the intent of the people. See State ex rel. Summerfield v. Clarke, 21 Nev. 333, 337 (1892); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883). When the people repeal a section of the Constitution, it is presumed that the people intended to make a substantial change in the organic law. See State v. Weddell, 117 Nev. 651, 657 (2001).

When the people adopted the Nevada Constitution in 1864, Article 4, Section 29 provided that a regular session of the Legislature could not exceed 60 days and a special session of the Legislature could not exceed 20 days. The people repealed Article 4, Section 29 in 1958. Since then, the people have adopted another constitutional limit on the length of regular sessions that limits the length of regular sessions to 120 calendar days. Nev. Const. art. 4, § 2; Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 537-39 (2001). However, the people have not adopted another constitutional limit on the length of special sessions.

Because the people repealed the constitutional limit on the length of special sessions in 1958 and because the people have not found it appropriate to adopt another constitutional limit on the length of special sessions, even though they have found it appropriate to adopt another constitutional limit on the length of regular sessions, it is reasonable to conclude that the people intended to make a substantial change in the organic law by eliminating all constitutional limitations on the length of special sessions. Therefore, given that the people clearly expressed their intent to eliminate all constitutional limitations on the length of special sessions, it would be unreasonable to conclude that the Governor has implied power to impose a limit on the length of special sessions.

E. Governor Guinn's and Governor Gibbons' recent attempts to establish purported time limits on the length of special sessions are of no constitutional significance because such attempts conflict with the long-standing interpretation of Article 5, Section 9 by the legislative and executive branches.

When interpreting a doubtful or uncertain constitutional provision, the Nevada Supreme Court will often look to interpretations by the legislative and executive branches which occurred close in time to when the constitutional provision was enacted because such contemporaneous interpretations are "likely reflective of the mindset of the framers." Halverson v. Miller, 124 Nev. Adv. Op. 47, 186 P.3d 893, 897 (2008) (quoting Dir. of Office of State Lands & Invs. v. Merbanco, Inc., 70 P.3d 241, 256 (Wyo. 2003)). Thus, "[a] contemporaneous construction by the legislature of a constitutional provision is a safe guide to its proper interpretation and creates a strong presumption that the interpretation was proper." Id. (internal quotation marks omitted).

Furthermore, when a contemporaneous construction is consistently followed by the legislative and executive branches over a considerable period of time, that construction is treated as a long-standing interpretation of the constitutional provision, and such an interpretation is given great weight and deference by the judiciary. State ex rel. Herr v. Laxalt, 84 Nev. 382, 387 (1968); State ex rel. Torreyson v. Grey, 21 Nev. 378, 387-90 (1893) (Bigelow, J., concurring); State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). As further explained by the Nevada Supreme Court, "[a] long continued and contemporaneous construction placed by the coordinate branch of government upon a matter of procedure in such coordinate branch of government should be given great weight." Howell, 26 Nev. at 104; see also Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 400 (1876) ("in

case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail.").

From 1864 through the end of 2002, Nevada's Governors convened 18 special sessions of the Legislature. From a review of the Journals of the Senate and Assembly for that period of 138 years, no Nevada Governor, either in a proclamation convening a special session or in any supplemental proclamation or message issued during a special session, attempted to establish a purported time limit on the length of a special session.

For example, less than three years after the Nevada Constitution was adopted, Governor Blasdel convened the First Special Session of the Legislature on March 15, 1867. The First Special Session lasted for 20 days, the maximum allowed under Article 4, Section 29, which was in effect at that time. The Journals do not contain any evidence that Governor Blasdel attempted to limit the length of the First Special Session or attempted to terminate the First Special Session once it had convened. To the contrary, given that the First Special Session continued to meet until the expiration of the express constitutional limitation of 20 days which was in effect at that time, it is reasonable to conclude that the legislative and executive branches believed the express constitutional limitation of 20 days was the only limitation on the length of a special session.

It was not until 138 years later, after 17 additional special sessions had been held, that a Governor of this state attempted to establish a purported time limit on the length of a special session. On June 3, 2003, Governor Guinn convened the 19th Special Session of the Legislature. In his proclamation convening the special session, Governor Guinn called the special session "to begin at 4:00 p.m., on June 3, 2003, and to end at 5:00 p.m. on June 6, 2003." However, on June 6, 2003, and again on June 8, 2003, Governor Guinn amended his prior proclamations to extend the purported time limit on the length of the 19th Special Session. Finally, on June 12, 2003, after the Senate Majority Leader and the Speaker of the Assembly informed Governor Guinn that there was disagreement between the two Houses with respect to the time of adjournment, the Governor adjourned the 19th Special Session pursuant to Article 5, Section 11.

A short time thereafter, Governor Guinn convened the 20th Special Session of the Legislature. In his proclamation convening the special session, Governor Guinn did not attempt to establish a purported time limit on the length of the 20th Special Session, which lasted for 28 days from June 25, 2003, to July 22, 2003.

Similarly, in his proclamation convening the 21st Special Session of the Legislature, Governor Guinn did not attempt to establish a purported time limit on the length of the special session, which lasted for 25 days from November 10, 2004, to December 4, 2004.

On June 7, 2005, Governor Guinn convened the 22nd Special Session of the Legislature. In his proclamation convening the special session, Governor Guinn provided that "[t]he special session shall begin at 3:00 a.m. on June 7, 2005, and shall end at 7:00 a.m. on June 7, 2005." On that same day, Governor Guinn amended his prior proclamations several times to extend the purported time limit on the length of the 22nd Special Session. The Legislature, with the consent of both Houses, voluntarily adjourned *sine die* on June 7, 2005.

On June 5, 2007, Governor Gibbons convened the 23rd Special Session of the Legislature. In his proclamation convening the special session, Governor Gibbons provided that "[t]he Special Session shall begin at 5:00 p.m. on June 5, 2007, and shall end at Midnight, June 5, 2007." The Legislature, with the consent of both Houses, voluntarily adjourned *sine die* on June 5, 2007.

On June 27, 2008, Governor Gibbons convened the 24th Special Session of the Legislature. In his proclamation convening the special session, Governor Gibbons provided that "[t]he Special Session shall begin at 10:00 a.m. on Friday, June 27, 2008 and shall end not later than midnight on Sunday, June 29, 2008." The Legislature, with the consent of both Houses, voluntarily adjourned *sine die* on June 27, 2008.

On December 8, 2008, Governor Gibbons convened the 25th Special Session of the Legislature. In his proclamation convening the special session, Governor Gibbons provided that "[t]he Special Session shall begin at 9:00 a.m. (Pacific Standard Time) on Monday, December 8, 2008, and shall end not later than 11:58 p.m. (Pacific Standard Time) on Tuesday, December 9, 2008." The Legislature, with the consent of both Houses, voluntarily adjourned *sine die* on December 8, 2008.

Based on our examination of the special sessions of the Legislature from 2003 to 2008, the most that can be said is that Governor Guinn and Governor Gibbons both made attempts to establish purported time limits on the length of some of those special sessions. However, the issue of whether those purported time limits were binding and enforceable on the Legislature was never reached because the Governor and the Legislature, through their mutual efforts and cooperation, voluntarily agreed to complete the necessary legislative business within a mutually acceptable time frame. The fact that the legislative and executive branches, in a spirit of comity and cooperation, worked together within a mutually acceptable time frame during these special sessions has no constitutional significance on the issue of whether the Governor has the implied power to establish a binding and enforceable time limit on the length of a special session.

On many occasions, the Nevada Supreme Court has recognized that one branch of government cannot relinquish its constitutional powers by cooperating with another branch of government. For example, when the Legislature enacts a statute relating to court practices and procedures, "the courts may acquiesce out of comity or courtesy." Blackjack Bonding v. City of Las Vegas Mun. Ct., 116 Nev. 1213, 1220 n.4 (2000). However, when the courts acquiesce out of comity or courtesy to legislatively enacted procedural rules, the courts do not thereby relinquish the constitutional powers of the judicial branch. Furthermore, if the Legislature attempts to control the manner in which the courts exercise their constitutional powers, the Legislature encroaches on the judicial branch and acts unconstitutionally. See Johnson v. Goldman, 94 Nev. 6, 7-9 (1978); Goldberg v. Eighth Jud. Dist. Ct., 93 Nev. 614, 614-18 (1977).

One circumstance where such unconstitutional encroachment occurs is when the Legislature attempts to require judicial action within fixed periods of time. Specifically, the Nevada Supreme Court has held that "any legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function." Volpert v. Papagna, 85 Nev. 437, 439 (1969); Lindauer v. Allen, 85 Nev. 430, 434 (1969); Waite v. Burgess, 69 Nev. 230, 233 (1952). Similarly, if the Governor attempts to require legislative action within fixed periods of time during a special session, the Governor encroaches on the legislative branch and acts unconstitutionally.

It is also a fundamental rule of constitutional construction that the constitutionally based separation of powers cannot be waived by either the legislative or executive branch. Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1108 (2009). Consequently, regardless of the degree of assent or acquiescence by the legislative or executive branch, actions which infringe on the structural protections of separation of powers are unconstitutional. Freytag v. Comm'r of Internal Revenue, 501 U.S. 868, 879-80 (1991); Clinton v. City of New York, 524 U.S. 417, 445-46 (1998). Thus, the Legislature, by either its assent or acquiescence, cannot give the Governor the legislative power to determine the length of a special session.

Finally, even assuming that Governor Guinn's and Governor Gibbons' recent attempts to establish purported time limits on the length of special sessions created some doubt regarding this issue, it is a fundamental rule of constitutional construction that such doubt must be resolved in favor of the power of the Legislature, not the power of the Governor. Thus, we believe any claim that the Governor possesses the implied power to limit the length of a special session would be strictly construed against the Governor and in favor of the Legislature and the long-standing interpretation of Article 5, Section 9 which has been followed by the legislative and executive branches for most of Nevada's history.

F. An interpretation of the Nevada Constitution to give the Governor the power to limit the length of a special session or to terminate a special session once it has convened would produce absurd and unreasonable results.

Another fundamental rule of constitutional construction is that the Constitution should be interpreted to avoid unreasonable or absurd results. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 542 (2001). Thus, when a court is faced with two possible constitutional interpretations and one of those interpretations would produce results that are unreasonable or absurd in light of the intent of the Framers, the court will reject the unreasonable or absurd interpretation. Id.

If the Constitution were interpreted to allow the Governor to limit the length of a special session or to terminate a special session once it has convened, that interpretation would give the

Governor unbridled discretion to determine the length of a special session. Considering the Founders' great disdain for the unlimited executive power that royal colonial governors wielded over the length of legislative sessions, it would be unreasonable and absurd to conclude that the Framers of the Nevada Constitution intended, by mere implication, to give the Governor unbridled discretion to determine the length of a special session. Such unbridled discretion would offend core constitutional values that have been recognized since colonial times.

Additionally, if the Constitution were interpreted to allow the Governor to limit the length of a special session or to terminate a special session once it has convened, that interpretation would deprive the Legislature of a meaningful opportunity to take public testimony, to investigate disputed issues and to deliberate and debate the merits of legislative proposals during a special session. We believe such a result would be both unreasonable and absurd considering that the Legislature is the people's branch of government and was created to represent and carry out the will of the people.

In our representative democracy, the people have the right "to instruct their representatives and to petition the Legislature for redress of Grievances." Nev. Const. art. 1, § 10; U.S. Const. amend. I. As further explained by the United States Supreme Court, "[i]n a representative democracy such as this, [the] branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives." E. R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 137 (1961). Thus, meaningful public participation during a special session is essential to providing the Legislature with an indispensable source of information concerning the will of the people.

Because ascertaining the will of the people is critical to the success of the legislative process, state legislatures have the inherent power to conduct hearings and investigations to gather the information that is necessary to perform their legislative functions. Gibson v. Fla. Legis. Investigation Comm'n, 372 U.S. 539, 544-45 (1963). Indeed, the United States Supreme Court has stated that "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." McGrain v. Daugherty, 273 U.S. 135, 175 (1927). Thus, legislative hearings and investigations provide the Legislature with an indispensable source of information concerning the potential impact of legislation.

Given the importance that meaningful public participation and legislative hearings and investigations play in our representative democracy, it would be unreasonable and absurd to interpret the Constitution to provide the Governor with unbridled discretion to determine the length of a special session when such unbridled discretion could be used to limit public participation and deprive the Legislature of sufficient time to deliberate and debate the merits of proposed legislation. As explained by one court, "[i]nherent in the power to enact laws is the power to deliberate, and deliberation necessarily requires time." State ex rel. Distilled Spirits Inst. v. Kinnear, 492 P.2d 1012, 1016 (Wash. 1972).

Furthermore, because the people have the final say concerning the power of the Legislature, it is undoubtedly appropriate for the people to limit the length of legislative sessions through the adoption of express constitutional provisions. However, it would be unreasonable and absurd to interpret the Constitution to provide the Governor with such power by mere implication when such an interpretation would seriously erode the power of the Legislature to provide for meaningful public participation, to conduct legislative investigations and to engage in deliberation and debate.

Finally, if the Constitution were interpreted to allow the Governor to limit the length of a special session or to terminate a special session once it has convened, that interpretation could be used to deprive the Legislature of an immediate opportunity to override a veto during a special session. Article 4, Section 35 of the Nevada Constitution establishes the Governor's power of veto. That section gives the Governor 5 days in which to exercise a veto and return the vetoed bill to the Legislature if it is in session. The Legislature is then given the immediate opportunity to override the Governor's veto. However, if the Legislature, by its final adjournment, prevents the return of the vetoed bill, the Governor is given 10 days after the Legislature's final adjournment to file the vetoed bill with the Secretary of State. Under such circumstances, the

Legislature is not given an opportunity to override the Governor's veto until its next legislative session. See Jones v. Theall, 3 Nev. 233 (1867).

If the Governor had the power to limit the length of a special session or to terminate a special session once it has convened, the Governor could use that power to establish such a brief period for the special session that the Legislature, by its final adjournment under the direction of the Governor, would be deprived of an immediate opportunity to override a veto during the special session. This would result in a substantial and unusual shift in the constitutional balance of power in favor of the Governor. We believe such a result would be both unreasonable and absurd given the Founders' great disdain for executive control over legislative sessions and the fact that the Nevada Constitution does not contain any express authority that would justify such a substantial and unusual shift in the constitutional balance of power in favor of the Governor.

In sum, we believe an interpretation of the Nevada Constitution to give the Governor the implied power to limit the length of a special session or to terminate a special session once it has convened would produce several absurd and unreasonable results. Therefore, we believe the courts would reject such an interpretation.

G. AGO 2001-14 is not supported by sound legal reasoning or persuasive legal authority.

As noted previously, AGO 2001-14 opined that the Governor possesses implied constitutional power to establish a binding and enforceable time limit on the length of a special session. We believe AGO 2001-14 is flawed because it fails to discuss any of the historical evidence or fundamental rules of constitutional construction that we have discussed in our opinion. Instead, AGO 2001-14 relies primarily on an advisory opinion from the Florida Supreme Court and a case decided by the Nebraska Supreme Court. In re Advisory Opinion to the Governor, 206 So. 2d 212 (Fla. 1968); People ex rel. Tennant v. Parker, 3 Neb. 409 (1873). We believe this legal authority does not provide sufficient support for the conclusions in AGO 2001-14.

The first legal authority cited in AGO 2001-14 is In re Advisory Opinion to the Governor, 206 So. 2d 212 (Fla. 1968). In that advisory opinion, five justices of the Florida Supreme Court concluded that the Governor of Florida had the implied power to establish a binding and enforceable time limit on the length of a special session when the governor issued the proclamation calling the special session. Id. at 213-14. In their advisory opinion, the five justices failed to address any of the historical evidence or fundamental rules of constitutional construction that we have discussed in our opinion. Consequently, we believe the advisory opinion of the Florida Supreme Court is flawed because it suffers from a lack of legal authority to support the advisory opinion.[2]

The paucity of legal authority to support the advisory opinion of the Florida Supreme Court was highlighted by the two justices who joined in an insightful dissent to the advisory opinion. The dissenting justices noted that there was no provision in the Florida Constitution expressly authorizing the governor to limit the length of a special session and that "one branch of the sovereignty will not be empowered to exercise control over a coordinate branch by implication." Id. at 215 (Drew and Thornal, JJ., dissenting). The dissenting justices also noted that the governor was given specific and precise constitutional powers to call a special session and to state the purposes for the special session and that, by stipulating such specific and precise executive powers, the Constitution excluded the inference that the governor could impose

[2] We note that an advisory opinion of the Florida Supreme Court is not binding judicial precedent even in the State of Florida. See Lee v. Dowda, 19 So. 2d 570, 572 (Fla. 1944); State ex rel. Williams v. Lee, 164 So. 536, 538 (Fla. 1935); Collins v. Horten, 111 So. 2d 746, 751 (Fla. Dist. Ct. App. 1959). Thus, the advisory opinion of the Florida Supreme Court is weak authority concerning the power of Nevada's Governor to limit the length of a special session or to terminate a special session. We further note that, in a later case, the Florida Supreme Court stated in dicta that it agreed with its earlier advisory opinion. See Florida Senate v. Graham, 412 So. 2d 360, 362 (Fla. 1982). In that later case, though, the court still failed to offer any legal authority to support its earlier advisory opinion.

additional restrictions on the legislative power. Id. at 215-16. The dissenting justices concluded that "once the Governor activates the legislative process by the proclamation for an extra session, then, by the very nature of the legislative power, the Legislature itself controls the matter of its recesses or adjournment within the time limitations stipulated by the Constitution." Id. at 215.

Unlike the dissenting justices who followed well-established rules of constitutional construction, the five justices in the majority failed to support their advisory opinion with any legal authority, and they completely ignored this country's constitutional history and the Founders' great disdain for executive control over legislative sessions. As a result, we believe the advisory opinion of the Florida Supreme Court is flawed and does not provide sound support for the conclusions in AGO 2001-14.

The other legal authority cited in AGO 2001-14 is People ex rel. Tennant v. Parker, 3 Neb. 409 (1873). In that case, the Nebraska Supreme Court held that the Governor of Nebraska had the power to revoke a proclamation calling a special session before the state legislature convened in the special session. Id. at 418-23. Based on this case, AGO 2001-14 employs the following reasoning:

> Included within such power to revoke would be the authority to specify within the proclamation a specific time period during which the proclamation shall remain in force and effect. Accordingly, it is our opinion that the Governor possesses authority to specify a durational time limit for such special session.

Op. Nev. Att'y Gen. No. 2001-14 (June 12, 2001). We believe this reasoning is not supported by the Nebraska case or any other case.

First, courts are split on the issue of whether a governor has the power to revoke a proclamation calling a special session. Compare Royster v. Brock, 79 S.W.2d 707, 708-11 (Ky. 1935) (holding that the governor did not have the power to revoke a proclamation calling a special session), with Advisory Opinion to the Governor, 96 So. 2d 413, 416 (Fla. 1957) (opining that the governor had the power to revoke a proclamation calling a special session); In re Opinion of the Justices, 12 A.2d 418, 420 (Me. 1940) (same); People ex rel. Tennant v. Parker, 3 Neb. 409, 418-23 (1873) (same). Given this split in case law, it is debatable whether the Governor possesses the power to revoke a proclamation calling a special session.

Second, even assuming that the Governor possesses such power, courts agree that the power to revoke must be exercised before the Legislature has convened in the special session. See Advisory Opinion to the Governor, 96 So. 2d 413, 416 (Fla. 1957); In re Opinion of the Justices, 12 A.2d 418, 420 (Me. 1940); People ex rel. Tennant v. Parker, 3 Neb. 409, 418-23 (1873); see also Foster v. Graves, 275 S.W. 653, 655 (Ark. 1925) ("[T]he power of the executive over the form of his proclamation . . . is plenary until the Legislature has actually convened pursuant to the call contained in the proclamation.").

Indeed, in construing the Nebraska case cited in AGO 2001-14, the Nebraska Supreme Court found that the case "has insignificant precedential value" regarding the power of the governor after the legislature has convened in the special session. Jaksha v. State, 385 N.W.2d 922, 925 (Neb. 1986); see also 1 Norman J. Singer, Sutherland Statutory Construction § 5.02 (5th ed. 1994) (commenting that it is questionable whether the governor may withdraw the legislature's authority to act after the legislature has commenced to consider matters set forth in the governor's call).

Consequently, there is no legal authority to support the reasoning in AGO 2001-14 that the power to revoke the proclamation before the Legislature has convened in a special session implies that the Governor has the power to revoke the proclamation after the Legislature has convened in the special session. As a result, we believe the Nebraska case does not provide sound support for the conclusions in AGO 2001-14.

In sum, we believe AGO 2001-14 is flawed because it is not supported by sound legal reasoning or persuasive legal authority. Therefore, we believe AGO 2001-14 would be given very little persuasive weight by the judiciary.

H. The Legislative Counsel of the State of California has concluded that the California Constitution does not expressly or implicitly authorize the Governor of that state to limit the length of a special session.

Under Article IV, Section 3(b) of the California Constitution, the Governor of that state may convene a special session of the California Legislature by proclamation:

> On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session.

In an opinion letter sent to California Governor Arnold Schwarzenegger on November 7, 2008, the Legislative Counsel of the State of California concluded that the Governor's power to convene a special session did not include the power to limit its duration.[3] The opinion letter provided in relevant part:

> Nothing in the California Constitution limits the duration of a special session called by the Governor or requires the Legislature, once called into special session, to remain in session for any minimum period.
>
> Although only the Governor is authorized to call the Legislature into special session, the Governor has no authority to specify that the session last for a stated period of time. Unlike the federal constitution, which is a grant of power to Congress, the California Constitution is a limitation on the powers of the Legislature. That body may exercise any and all legislative powers that are not expressly, or by necessary implication, denied to it by the California Constitution. Second, if there is any doubt as to the Legislature's power to act, the doubt should be resolved in favor of the exercise of power. Restrictions and limitations imposed by the California Constitution should be construed strictly, and should not be intended to include matters not covered by the language used (Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168, 180; City of San Jose v. State of California (1996) 45 Cal.App.4th 1802, 1810). Because the California Constitution does not expressly or implicitly authorize the Governor to limit the duration of a special session, we conclude that the Governor may not do so.
>
> Thus, we conclude that it is entirely up to the Legislature to determine how long it will stay in session under a special session called by the Governor.

Op. Cal. Legis. Counsel No. 0828476 (Nov. 7, 2008).

On its face, Article IV, Section 3(b) of the California Constitution regarding special sessions is not identical to Article 5, Section 9 of the Nevada Constitution. Nevertheless, because these constitutional provisions are sufficiently similar in substance, we believe the opinion of the Legislative Counsel of the State of California provides further support for our conclusion that the Governor does not possess any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

CONCLUSION

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[3] A copy of the opinion letter is available at: http://media.sacbee.com/smedia/2008/11/12/17/17738.source.prod_affiliate.4.pdf

After reviewing extensive historical evidence and persuasive legal authorities and after applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor does not possess any express or implied constitutional power to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened.

Furthermore, because this issue involves the interpretation of a doubtful or uncertain constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the doubtful or uncertain constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

Finally, we note that the Governor may recommend to the Legislature a time limit on the length of a special session when the Governor issues the proclamation calling the special session. Likewise, once the Legislature has convened in a special session, the Governor may issue a supplemental proclamation or message recommending to the Legislature a date and time for the Legislature to adjourn *sine die*. In either circumstance, the Legislature may voluntarily follow the Governor's recommendation in the spirit of mutual cooperation with a coordinate branch of government. However, given the plenary power of the Legislature to control the length of its legislative sessions, any recommendation from the Governor concerning the length of the special session would not be binding or enforceable on the Legislature, and the Legislature would be free to determine its own date and time to adjourn *sine die* regardless of any recommendation from the Governor.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By_____
Kevin C. Powers
Senior Principal Deputy Legislative Counsel

KCP:dtm
Ref No. 1002242159
File No. OP_Malkiewich10022422427

REMARKS FROM THE FLOOR

Assemblyman Oceguera moved that the following remarks be entered in the Journal.

ASSEMBLYMAN SETTELMEYER:

Thank you, Madam Speaker. I understand the opinion. I also believe that there is an Attorney General opinion from 2001-14 that seems to contradict that. It has nothing to do with my like, my dislike, of a governor of any type. I would be having this speech whether it was Republican, Democrat or Independent. I believe very much in the separation of powers and based on that Attorney General opinion, I do believe the Governor does have discretionary power and has stayed within it. The Governor's discretionary power to issue the proclamation convening the special session includes the power to revoke, amend or specify the time periods that proclamation shall be in effect.

I would like that also read into the record.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Well, we can ask our legal counsel to come down and talk about it and I will also ask if they want me to put it for a vote, so I want it really clear in the record that the Executive Branch cannot tell the Legislative Branch when to end. I think it is really important for separation of powers.

Our legal counsel does not believe the Attorney General's opinion is correct. I will put my faith in Brenda Erdoes and Kevin Powers any day of the week. They have done a tremendous job in representing us and you know, that is certainly where I come down. So I am going to double check to see if it would be better to have a vote so it is very clear what the majority opinion is on this issue. I won't put it in the record yet; I will ask clarification from Brenda.

I would also note that the good news also is that because of the cooperative relations between the Executive Branch and the Legislative Branch, we do have a proclamation extending the end of the session, so we are not going to go to court; we are not going to fight about it, but it is important to preserve the integrity of the Legislature and separation of powers. I say this not because I am returning to this body, but because it is an important constitutional principle. I think it need to be made very clear what our position is so we are not seen to have acquiesced to the decision on when to end our body's time.

Brenda, I see you sitting up there, is there anything you want to add to this discussion about….No, Brenda wants to go home. Okay, if you will just come to see me for a second, I just had a quick question for you.

COMMUNICATIONS

MESSAGES FROM THE GOVERNOR

OFFICE OF THE GOVERNOR
JIM GIBBONS
GOVERNOR

February 28, 2010

The Honorable Barbara Buckley, *SPEAKER OF THE ASSEMBLY*, NEVADA STATE ASSEMBLY,
401 SOUTH CARSON STREET, CARSON CITY, NEVADA 89701

TO THE HONORABLE MEMBERS OF THE NEVADA STATE ASSEMBLY:

Due to the complex issues involved, I have been requested to amend the time limitation that I have set for concluding the 26th Special Session of the Nevada Legislature. Additionally, I have been requested to bring an additional matter to your attention to be considered during this Special Session.

Accordingly I have amended my First Amended Proclamation to address these two requests.

My staff and I remain committed to working with you during this session.

Sincerely,
JIM GIBBONS
Governor

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that the reading of the amended Proclamation issued by the Governor regarding additional matters be dispensed with and that the Proclamation be entered into the Journal.

Motion carried.

STATE OF NEVADA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER

SECOND AMENDED PROCLAMATION
BY THE GOVERNOR:

The Senate Majority Leader and the Speaker of the Assembly, due to the complex issues involved, have requested I amend the time limitation that I have set for concluding the 26th Special Session of the Nevada Legislature.

Therefore, I, Jim Gibbons, Governor of the State of Nevada, by virtue of the authority vested in me by the Constitution of the State of Nevada, hereby amend my First Amended Proclamation dated February 24, 2010 and extend the 26th Special Session of the Nevada Legislature until 5:00 p.m. on Monday, March 1, 2010.

Additionally, Legislative Leadership has requested an additional matter to be considered during this Special Session. Section 9 of Article V of the Nevada Constitution provides that the Governor may request the Legislature, when convened in Special Session, to consider matters other than those set forth in the call.

Therefore, I am exercising my constitutional authority to bring the following additional legislative business to your attention:

- An act relating to governmental financial administration; revising provisions governing the Fund for Cleaning Up Discharges of Petroleum; repealing the prospective limitation on the collection of certain gross receipts taxes in Clark County; transitioning certain fees from statute to regulation and providing other matters properly relating thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City this 28th day of February, in the year two thousand ten.

Jim Gibbons
Governor

Ross Miller
Secretary of State of Nevada

Nicole Lamboley
Deputy Secretary of State of Nevada

REMARKS FROM THE FLOOR

Assemblyman Oceguera moved that the following remarks be entered in the Journal.

ASSEMBLYMAN OCEGUERA:

Thank you, Madam Chair. To the question on the Attorney General opinion, in our opinion, I will just state some basics on here, AGO Opinion 2001-14 is not supported by sound legal reasoning or persuasive argument. That doesn't sound good. It says that "we believe the AGO is flawed because it fails to discuss any of the historical evidence or fundamental rules of constitutional construction that we have discussed in this opinion." Then it goes on for awhile, and says, "there is no legal authority to support the reasoning of the AGO that the power to revoke the proclamation before the Legislature is convened in special session implies the Governor has the power to revoke the proclamation after the Legislature has convened into special session…..in sum, we believe it is flawed because it is not supported by sound legal reasoning or persuasive legal authority."

Then, Madam Chair, not to be argumentative, but you accepted the motion that I made and entered the opinion into the record, and it was already voted on, quite frankly, so I think the motion was out of order.

MADAM SPEAKER:
I agree, let's move on.

Assemblyman Oceguera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering BDR 31-43.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 11:42 p.m.
Chair Buckley presiding.
Quorum present.
BDR 31-43 discussed.

Assemblywoman Smith moved to introduce a corrected version of BDR 31-43.

Seconded by Assemblywoman Leslie.

Motion carried.

On motion of Assemblyman Oceguera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 11:43 p.m.
Madam Speaker presiding.
Quorum present.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 11:44 p.m.

ASSEMBLY IN SESSION

At 12:19 a.m.
Madam Speaker presiding.
Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Assembly Bill No. 6—AN ACT relating to governmental financial administration; revising certain appropriations from the State General Fund for the support of the civil government of the State of Nevada; authorizing expenditures by certain agencies and entities of the State Government; providing for the transfer of certain appropriated money to the next fiscal year; requiring the Clean Water Coalition to transfer certain money to the State Controller for deposit in the State General Fund; increasing fees imposed for certain filings or registrations made with the Office of the Secretary of State; revising provisions relating to foreclosure of real property; revising provisions relating to the use of money in the Account for Common-

Interest Communities and Condominium Hotels; increasing certain administrative assessments imposed against persons who commit certain crimes; authorizing the Department of Corrections to adopt regulations to allow the Department to deduct money credited to the Offenders' Store Fund for certain purposes and to impose a charge on purchases of electronic devices; providing for the temporary transfer of certain lobbyist registration fees; increasing certain fees charged by the State Registrar; authorizing the Department of Wildlife to use fees collected for processing applications for tags for certain additional purposes; imposing an additional fee for filing certain affidavits relating to mining claims; reducing the basic support guarantees of school districts for purposes of apportionments from the State Distributive School Account; requiring the Department of Taxation to allow for the payment of delinquent taxes, fees or assessments without a penalty for a limited period in certain circumstances; requiring the Division of Insurance of the Department of Business and Industry to carry out a desk audit program to audit insurance premium tax returns; providing for the use of money from an award from the Temporary Assistance for Needy Families Emergency Contingency funds; making appropriations; and providing other matters properly relating thereto.

GENERAL FILE AND THIRD READING

Assembly Bill No. 6.

Bill read third time.

Remarks by Assemblymen Oceguera, Cobb, Smith, Gansert, and Madam Speaker.

Assemblyman Oceguera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN OCEGUERA:

Thank you, Madam Speaker. One of the sections that was worked on a lot down to the last minute here this time was on the sections on the claim fees and the mining industry was one of the businesses that I think sets an example for the next session by stepping up to the plate. The cuts to education, etc. would have been much, much worse if they had not stepped up to the plate, willingly at first, and then pushed a little bit farther down the way. I just wanted to make that part of the record.

ASSEMBLYMAN COBB:

I rise in opposition of Assembly Bill 6. After midnight I bullet point my speeches so I will just get to the point. I think we had some good proposals brought forward and I think there was a lot of cooperation by a lot of different groups. I appreciate the work of everyone in this body, people who have been working on this for weeks. I think that there were some good ideas put forward by the Republicans in this room. I appreciate all of the work that they did and I think that we had a pretty good proposal that did not increase nonuser fees, which are fees that are directly related to individual voluntary programs and taxes. I cannot go along with what I feel is going to be a tax and nonuser fee increase in this recession. I also think that there are some duplicative programs, namely, the NERC (Nevada Equal Rights Commission) program, which according to this DETR memo suggests that 90 percent of their caseload actually involves federal violations and, therefore, could be handled by the federal government. Department of Employment, Training, and Rehabilitation’s memo goes on to suggest it could handle the remaining cases at a very low cost and not necessarily keep another office open. So I do believe

that there are some areas we could have cut back. Although, I think that we came forward and many of us on our side of the aisle said that is fine, we will accept some things that perhaps otherwise we would not be willing to accept, but only as a package deal with some of the other things that were our priorities. I think that there was a good spirit of cooperation in this body, and I think that we had some good ideas that we felt we could go along with. Not to speak for anyone else but I just could not go along with this particular package here for the reasons I have stated. Thank you.

MADAM SPEAKER:
Thank you, Assemblyman Cobb. Assemblywoman Smith.

ASSEMBLYWOMAN SMITH:
Thank you, Madam Speaker. I rise in support of Assembly Bill 6. These are difficult times and we have heard, for the last three weeks sitting though our Interim Finance Committee meetings and town hall meetings, about our budge deficit and what the impacts of the loss of this funding means to the citizens in our state. I am appreciative of all of my colleagues and of the leadership here and who have helped us get to where we are tonight. This bill has a lot of compromise in it, a lot of tough decisions, and really a lot of pain in it. As we leave here and we feel pleased that we were able to mitigate what we have been able to do. We also have to remember that we truly have made $304 million in cuts and that impact the lives of our citizens every day.

Whether it is a smaller budget item or a huge budget item, these are services and needs that our citizens have every day. I suppose the fact that nobody is happy with all of this probably means that it was pretty equitable because whether it is a fee increase—I would love to pick off a few things that I didn't like—but when you are talking about a $900 million budget hole, you are going to have things to solve this problem, whether they are cuts or fee increases that you may not like. I just feel like we are fortunate compared to where we were a few weeks ago that we have been able to get where we are tonight and go home with being able to restore some of those education cuts and the worst of the human services.

While we know we have a lot of challenges ahead of us in the coming year and that it is really time for us, as soon as we leave here to begin working on those solutions, and I look forward to doing that with my colleagues. I think we need to feel pretty good about the fact that we put in a lot of work, we have listened to more constituents than I can remember in my several sessions here and in the interim. I have never had so much contact with real stories and real solutions and real offers of help. Please when you leave here remember that we can feel really good about the things we have restored. But we have also made a lot of serious cuts and we are going to be changing lives in a lot of ways. I thank you all for what you have all come together and done and I also urge your support of this bill.

ASSEMBLYWOMAN GANSERT:
Thank you, Madam Speaker. I too rise in support of Assembly Bill 6. I think there was a great effort put forth by this legislative body and also the Governor to come together in agreement. I know when I first heard the numbers after they recalculated it from the Economic Forum, when it rose to $900 million; it seemed like an insurmountable task. I did not know how we were going to get this done. I think we did a good job of using the Interim Finance Committee hearings to keep the costs down to get a lot of input.

This session we have spent some time rehashing the entire budget in a very short period and in a very efficient manner. Some of the things in this bill we need to recognize is first, there is over $300 million in cuts which is going to help us as we move towards next session and that it restores funding to education and our most vulnerable populations; that we keep our state parks open, that we keep our museums open, that we keep our Gaming Control Board whole so that we still have the golden ticket in the world when it comes to gaming licenses. It also has very minimal fees and some new revenues. There are a lot of things that we do not necessarily agree on and there are some things that we hate in this but it was a compromise. We have been in a very difficult position given the $900 million hole and I think this is a bipartisan package with a solid agreement to try and move forward and I urge your support. Thank you.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

Just a couple comments: I would like to echo the comments of my colleagues and thank everyone for their incredible work in putting together this measure. Not only did we reduce the proposed reductions to K-12 and Higher Ed, also, as stated by my colleague, we went through department by department to make sure we were not making mistakes. We restored money to the Gaming Control Board. We restored five positions to the Office of Water Engineer. There is a lot of philosophical debate; all fees are bad. Look at what happened by not having appropriate fees in the Office of the Water Engineer. How much more are we going to cost businesses around the state by not funding it properly and not funding it by fees? If you did a cost benefit analysis of that, to be penny-wise and pound-foolish makes no sense.

In addition to restoring those and other critical positions, we made some significant changes to state employees. We previously, as we all know, had cut their salaries by 4.6 percent, and along with other changes in healthcare and pension, it was an 11 percent cut. It was an original proposal to require state employees to take additional furloughs. I met two state employees last night as I left the building and they asked about the furlough. The woman said to me, "I am a single mom with kids and I am barely making it, barely getting by." I told her about reducing the furlough hours and she hugged me and she asked me to "thank all of the legislators tomorrow for me; we really appreciate everything you do for us."

So whether it was the restoration of K-12 or the various adjustments, we worked together side by side to pass a balanced budget in a very short amount of time. I would like to recognize the Governor's Office. It would have been very easy for the Governor to stay over across the complex and not try and work with us, but he did not. I would like acknowledge Senate Majority Leader Steven Horsford. He has spent the last two weeks, every minute of every day, working on this. I would like to acknowledge our Majority Leader, John Oceguera, for his tireless work on this bill.

Under Order of Business 15, I think that you all know that John and his wife just had a baby, so every night John listens to his baby cry via his iPhone. We thank you for your sacrifice at a very critical time in your life and for all of your work in making this happen. I would also like to acknowledge Assemblywoman Debbie Smith who, from our Ways and Means perspective, just spent every minute of every day on this. Her husband said when she retired, we got the benefit and he did not. We thank you for all of your service. I would also like to recognize the Minority Leader. We had a big disagreement this week, but the next day it was the Senate versus the Assembly in the core group meeting. It was like that day had not even happened and that is what bipartisanship means. I would like to also thank Senator Raggio; what an incredible public servant. We just put aside partisan differences, came up with the best solution we can for the state and I think we set an example for the public.

Republicans and Democrats are not impressed by Washington D.C. and partisan bickering. The Nevada style of working together that I learned from Speaker Joe Dini, Senator Bill Raggio and the titans of this building are our model and that should not be lost. Thank you for all of your service even when we disagreed; thank you for helping us get to this point. We balanced the budget in time and made it better and did the best we could for the citizens of our state.

Roll call on Assembly Bill No. 6:

YEAS—34.

NAYS—Christensen, Cobb, Goedhart, Goicoechea, Gustavson, McArthur, Settelmeyer, Woodbury—8.

Assembly Bill No. 6 having received a two-thirds majority, Madam Speaker declared it passed.

Assemblyman Oceguera moved that all rules be suspended and that Assembly Bill No. 6 be immediately transmitted to the Senate.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, March 1, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Bill No. 5.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 12:38 a.m.

ASSEMBLY IN SESSION

At 12:41 a.m.
Madam Speaker presiding.
Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 5.

Assemblyman Oceguera moved that the bill be referred to the Committee of the Whole.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 5.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 12:43 a.m.
Chair Buckley presiding.
Quorum present.
Senate Bill No. 5 considered.

ASSEMBLYMAN ATKINSON:

Thank you, Madam Chair. I am going to ask Gary Milliken if he can come to the table with me. While Gary is making his way to the table, I will go ahead and start to go over the important sections of Senate Bill 5 that the Committee should have in front of them at this time. Senate Bill 5 would extend the 1.8 percent of the sales tax that was approved by the voters in Clark County for roads projects, which has been scheduled to sunset once $1.8 billion in projects were completed. That $1.7 billion will reach its capacity with the $300 million that the Department has left to bond, so it will expire with the next set of projects, so we are trying to make sure that we're proposing that cap be lifted so the RTC can continue to bond for additional rural projects with the estimated $40 million that the 1.8 percent sales tax brings into Clark County annually. The money will flow as it does now, collected by the Nevada Department of Taxation as part of the sales taxes collected in Clark County, and then remitted to the county.

We are also proposing that the DMV be allowed to set fees through regulations. If you note on page 4 of the bill, you will see the fees that we were considering. The Governor's Office asked that we not put the fees in the bill, but instead let the fees be set by regulation from the

DMV, so the DMV will be able to ask. Let me remind you that those fees will also have to come back to this body before they can be changed by the DMV, but they asked that they be outlined in the bill this way, and the Governor's Office does agree with it this way.

We are also proposing to lift the cap on the amount of revenue that can be collected through the $.75 cent per gallon tax on gasoline and diesel fuel for the cleanup of underground petroleum storage tanks. This would allow about $2.9 million in the current revenue fund that will go towards jobs.

There is another important section of the bill, if you will look at page 6 of the bill, you will see the fees that were on page 4 were actually added back, but please note that those fees are not taking effect; it's just saying that if those fees are dealt with by the DMV or asked to be increased, these are the only ones that this bill will deal with. That's where we are with this particular piece of legislation. I know that we're all very tired, but we will stand for questions. Just to let you know, this bill is supported by labor and management. It was brought forth by the AGC, Associated General Contractors, who estimate that for every $500 million spent on roads and highway projects, there will be a result of about 4,250 direct on–site construction jobs, 2,100 jobs in the construction supply industry, and about 7,500 jobs in other sectors that are stimulated by the construction spending, as workers spend their income, based on about $500 million we anticipate to receive from this. We're talking about 12,000 new jobs in the next 12 months and another 3,000-6,000 jobs in the follow–up months. With that said, we will stand for questions. I have asked some industry people to come to the table, as you see to my left and right, to help get through this bill, and hopefully, we will be in a position where we are creating jobs and having more money for bonding capacities. As you know at this point, the Senate passed this bill out of the Senate 21-0. We will take questions, Madam Chair.

CHAIR BUCKLEY:
Thank you, Assemblyman Atkinson. Assemblyman Christensen.

ASSEMBLYMAN CHRISTENSEN:
Thank you, Madam Chair. As I'm looking through this, I just wanted to make sure that I understood a couple of basic things. Are these funds collected exclusively in Clark County or is it statewide?

ASSEMBLYMAN ATKINSON:
It is statewide.

CHAIR BUCKLEY:
Assemblyman Hardy.

ASSEMBLYMAN HARDY:
Thank you, Madam Chair. I assume that the words, "public roads" include bridges, otherwise known as transportation facilities, allows design, building projects pending and any other funding mechanism, public-private partnership, of any kind would be potentially in the mix? There aren't any preclusions in there?

STEVE HOLLOWAY, EXECUTIVE VICE PRESIDENT, ASSOCIATED GENERAL CONTRACTORS:
There are no preclusions in there for public-private partnerships if you wish to pursue them.

CHAIR BUCKLEY:
Obviously, the other existing provisions of law apply, so whatever we've already enacted with regard to design build would be applicable. Similarly, we haven't allowed toll roads, for example, so they still would not be allowed. The rest of our laws, obviously, are still on the books, and we would be complemented by this. Are there any other questions? Assemblyman Bobzien.

ASSEMBLYMAN BOBZIEN:
Thank you, Madam Chair. Just a quick clarification, I think the bill lays out the trigger aspect of how it interacts with the fund pretty clearly, but just to make sure that that fund's integrity is sound in terms of its ability to respond to remediation issues that might come up, it's still able to do what it's intended to do, is that correct?

ASSEMBLYMAN ATKINSON:
We're all debating what your question is. I don't know if it's late, or if it's that you're not speaking well.

ASSEMBLYMAN BOBZIEN:
I'll try again. For the fund for cleaning up discharges of petroleum, the money is still going to be there, and it's still going to be able to clean up petroleum discharges, is that correct?

STEVE HOLLOWAY:
Yes. That is correct. This money that's coming from the $.25 gas tax goes to the petroleum reserve fund, clean up fund if you will, will only begin to go to the construction account after the $7.5 million cap is filled each year.

CHAIR BUCKLEY:
Assemblyman Atkinson.

ASSEMBLYMAN ATKINSON:
Assemblyman Bobzien, if you look at page four, lines 34 and 35, I believe that addresses your concern.

CHAIR BUCKLEY:
It does not divert any money away from existing projects. It otherwise would have been capped, and then we couldn't create jobs. Assemblyman Atkinson has taught me well today.

ASSEMBLYWOMAN GANSERT:
Thank you, Madam Chair. I don't know if you said this earlier, but where are you relative to the $1.7 billion cap right now, as far as completed projects?

ASSEMBLYMAN ATKINSON:
We are about a little more than $300 million away from being capped.

ASSEMBLYWOMAN GANSERT:
So you're at about $1.4 million. My other question was it looks like this is sort of an evergreen, that this portion of the sales tax continues forever because there is no longer a cap, but there is also not a date of expiration?

STEVE HOLLOWAY:
The cap has been lifted. The cap was imposed by the Clark County Commission and this legislative body. Traditionally, some of these types of measures have had caps, and others have not. This body may at any time come back and impose a cap, if they so choose.

ASSEMBLYWOMAN GANSERT:
Thank you. My other question is it seems like when we do school bonds and things like that we actually have a time certain. We say that you can raise these funds to a certain date; was there a piece of that that also had an expiration date? You came in earlier, and I was thinking that there was a conversation that some of the funds were available to a certain date, and you were looking for an extension of that.

STEVE HOLLOWAY:
When we initially discussed this with you, we had in the proposal a date certain which was 2049, which extended this out 25 years.

ASSEMBLYWOMAN GANSERT:
If I can follow up, so you were going to extend it 25 years, and now you just took the cap off? Is that correct?

STEVE HOLLOWAY:
That is correct.

ASSEMBLYWOMAN GANSERT:
To get the original taxes, that was probably a vote, and I know with the school district funds, you usually have to do a rollover measure, so you get to a certain date and then you have go to the vote of the people to get that to rollover?

STEVE HOLLOWAY:
This was the result of Proposition 10. There was no date specific set in Proposition 10. It was just the sales tax that the people voted for. They did not in the Proposition say that it would end at any specific date. They did talk about certain amounts that they needed immediately, and the initial amount that they discussed as needing immediately was $2.9 billion, as opposed to the cap of $1.75 billion that this Legislature imposed.

ASSEMBLYMAN ATKINSON:
Madam Chair, if I could follow up just a second. If you remember, Proposition 10 was actually an advisory question, and so it was advisory in nature only and the Clark County Commission acted on it, and then it came back to this body for approval. This body put the cap on of $1.7 million just because they felt they didn't want to do a blank check, but that's why this body put it on, but it was really advisory only, so it did not have a cap, nor did it have a date.

ASSEMBLYWOMAN GANSERT:
But, it did have sort of a check on it in that there was a vote, and then it came to the Legislature and you could do it either way. Okay, thank you.

CHAIR BUCKLEY:
Assemblyman Goicoechea.

ASSEMBLYMAN GOICOECHEA:
Thank you, Madam Chair. To the Chairman of Transportation: I'm looking at the seven fees that you're proposing that DMV has the ability to raise by regulation, and of course, I'm not real keen on turning DMV loose with the fee process. What kind of funding are you going to cap the funding coming out of those? I could just see as we see more and more demands placed on it for this program that maybe we end up with a $50 title fee or whatever.

ASSEMBLYMAN ATKINSON:
Actually, we didn't have a cap, but as I said earlier, while they're being proposed here, they actually won't be dealt with in the bill, which means they won't be creating anything at this point, but if the DMV so chooses, for example, the first one for titles— increasing that for titles—they would actually have to come back to this body and explain why they want to do it, and the amount that they want to do it for. It would be dealt with at the time.

ASSEMBLYMAN GOICOECHEA:
I apologize then; I didn't realize they would be coming back to this body. I thought they would go to the Legislative Commission as the normal regulations do, is that not correct?

ASSEMBLYMAN ATKINSON:
I'm sorry if I misspoke, but that is what I meant, to the Legislative Commission.

ASSEMBLYMAN GOICOECHEA:
Thank you.

CHAIR BUCKLEY:
Mr. Holloway, do you have anything else to add?

STEVE HOLLOWAY:
Madam Chair, just one sentence on the statistics that Chairman Atkinson relied upon. For each $1 billion in construction, we're adding $3.4 billion to the gross net domestic product with about one-third of that total showing up as personal earnings. As I've spoken to many of you, we've laid off about 70,000 people in the last two years. Without this bill, we will be laying

thousands more off over the next year. We encourage you to pass this with the gratitude of those people. They would like to go back to work. Thank you.

CHAIR BUCKLEY:

Thank you, Mr. Holloway. Mr. Milliken? No. Okay, thank you gentlemen very much. Is there anyone else that would like to provide testimony on this measure?
Assemblywoman Koivisto.

ASSEMBLYWOMAN KOIVISTO:

Thank you, Madam Chair. Is there any way that we can make sure that we put Nevada people to work on these roads, and not Utah and Arizona and California, and so on and so forth?

ASSEMBLYMAN ATKINSON:

That's an excellent question. It came up on the Senate side, and we allowed Mr. Holloway to explain it over there, and we'll do the same here.

STEVE HOLLOWAY:

We had discussed requiring the contractor to use 80 percent of his workforce be local residents. We decided not to go away with this because in the highway industry, anywhere from 30 to 60 percent of that work is self-performed. Also, almost all of the RTC jobs in southern Nevada have gone to local contractors, and we feel that they will continue to be. Furthermore, many of these jobs are now being let construction–manager risk, which is a method of contracting that this Legislature approved two sessions ago. These are engineering jobs that require not only that there be a five percent bidder's preference for local contractors, but also that at least 25 percent of the work on those projects be self–performed, so a company coming in from state cannot self–perform that work. They do not have the workforce here to do that.

CHAIR BUCKLEY:

That was your last question. Thank you very much. Is there anyone else who would like to provide testimony on this measure?

BRYAN GRESH, REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA:

Thank you very much for the opportunity to appear before this body this evening. I am here to say that the RTC, right now as we sit here this evening, has approximately $1 billion in shovel–ready projects, which represent approximately between two and three dozen separate jobs, full scale jobs sitting there waiting for able-bodied men and women in southern Nevada to be able to get there and get to work. Unfortunately, we do not have the money. We do not have the green to give them the green light, so as has been already eloquently stated; we are standing by ready, willing, and able. If the funds were available, we'd be there to be able to provide these skilled men and women who right now are unemployed with the opportunity to get back to work. We would certainly welcome that opportunity, and I would stand for any questions. Thank you.

VERONICA METER, VICE PRESIDENT OF GOVERNMENT AFFAIRS, LAS VEGAS CHAMBER OF COMMERCE:

We're here to provide support for this bill, and I would like to echo some of the positive aspects of the bill that have been expressed so far. We believe this bill will not only preserve private sector jobs but also help create jobs and put our state back on the road to recovery. It will also help provide some of the much needed infrastructure for our businesses and communities. In short, this will be a positive step to get our economy moving again and put Nevadans back to work. I appreciate the opportunity to address you. Thank you.

CHRIS FERRARI, NEVADA CONTRACTORS ASSOCIATION:

On behalf of our more than 200 members who provide more than 10,000 jobs in southern Nevada, who have built much of the infrastructure we rely on there. We are in strong support of this bill and would echo the comments of the previous speakers. Thank you.

CHAIR BUCKLEY:

Questions of the Committee? Assemblyman Manendo.

ASSEMBLYMAN MANENDO:
Mr. Gresh, I was just wondering if you have a few, you said there were about three dozen shovel ready projects, do you have some of those in mind? I know there are people who are listening right now, and I had an actual email asking what projects are they? I don't know if you could just name a few that could be ready and could also get me a list later on, but they are listening.

BRIAN GRESH:
I appreciate that. The hour is late. The list is long, and it's sitting in the hotel room. I'd be more than happy to provide you with that at a later time.

CHAIR BUCKLEY:
Assemblyman Hogan.

ASSEMBLYMAN HOGAN:
Thank you, Madam Chair. There's been a great deal of interest in the Legislature and in the public of late in ensuring that the job opportunities that are created by these projects and other public spending for construction, that these opportunities are available to women and minorities who have not always been able to fully participate in this. Would there be a willingness on the part of RTC to include provisions in the contracts and subcontracts, similar to what NDOT is doing, to encourage, or in fact require the contractors to participate in efforts to ensure the diversity of the workforce that's going to benefit from this public money?

BRIAN GRESH:
We certainly appreciate the question and have always enjoyed having this dialogue with you, sir. As you know, the RTC has always been on the forefront in these opportunities, as they come up, to be an equal partner with those who have sought opportunities to work with the RTC. We will continue to work with you in seeking out these chances to provide opportunities to those who are looking to work with us.

CHAIR BUCKLEY:
Further questions? Assemblyman Hardy.

ASSEMBLYMAN HARDY:
Thank you, Madam Chair. How long will it take for these shovel ready jobs to have somebody actually on the ground working?

BRIAN GRESH:
There is a continual timeline that is in progress from conception through to completion, or I should say, the first turn of the shovel full of dirt, so there are projects that are at different phases of completion or different phases of design, and these dollars would simply go to plug in to those projects. So, could I give you a specific answer for a specific dollar, no sir, not this evening, but once those dollars were to be freed up, and the bonding of those projects could begin, then we could go forward and provide you with that list. We would be more than happy to provide the Legislature with that list.

ASSEMBLYMAN HARDY:
Is that a six month process?

CHAIR BUCKLEY:
Yes, it is.

BRIAN GRESH:
I think that's a very fair statement. I think that's probably in the ballpark.

CHAIR BUCKLEY:
I was reflecting the nodding head from Steve Holloway, for the record, and not my own opinion. Any other questions of the Committee? Assemblyman Munford.

ASSEMBLYMAN MUNFORD:
Thank you, Madam Chair. I just want to put on record that I support and echo the comments that were made by Assemblyman Hogan. Thank you.

CHAIR BUCKLEY:
Any further questions of this panel? There doesn't seem to be. Thank you very much for your testimony. Is there anyone else that would like to provide testimony on this measure?

PETER KRUEGER, NEVADA PETROLEUM MARKETERS ASSOCIATION:
The Nevada Petroleum Marketers Association wants to assure this body that regarding the petroleum fund that's been in business since 1990, cleaning up the soil and water in Nevada, that fund under the provisions of this bill continues unfettered, and those clean ups will continue at the pace that they have for that length of time. We are supporting this jobs bill and then also on behalf of the Nevada Subcontractors Association, our labor management group and coalition, obviously we are supporting this as a jobs bill to get our members back to work. Thank you.

RANDY SALTERO, SHEET METAL WORKERS UNION LOCAL 88 IN SOUTHERN NEVADA:
I don't have to tell you how many jobs we've lost in the last year or so. This bill, we believe, will create many jobs that will not only employ our members, but members of other organizations, and we do encourage you to support this legislation and pass this quickly. Thank you so much.

CHAIR BUCKLEY:
Assemblyman Grady.

ASSEMBLYMAN GRADY:
Thank you, Madam Chair. Mr. Krueger, in the past on the petroleum fund there was quite a delay for people collecting the monies from that. Has that been straightened out and are people up to date in collecting what is due them through this petroleum fund?

PETER KRUEGER:
Early on, that is correct. Because the fund was new, we had difficulty getting the money out, but it was never a problem of funding. It was just a case of working through the process. Right now, the fund meets quarterly and distributes money on a quarterly basis so that funding is prompt and, of course, it's given its due process so that only the right people get the right amount of money.

CHAIR BUCKLEY:
Further questions. I don't see any, thank you very much. Is there anyone else who would like to provide testimony on this measure? Seeing none, I will close the public hearing and bring it back to Committee.

Assemblyman Atkinson moved to do pass Senate Bill No. 5.
Seconded by Assemblyman Conklin.
Motion carried.

On motion of Assemblyman Oceguera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 1:15 a.m.
Madam Speaker presiding.
Quorum present.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee of the Whole, to which was referred Senate Bill No. 5, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BARBARA E. BUCKLEY, *Chair*

GENERAL FILE AND THIRD READING

Senate Bill No. 5.

Bill read third time.

Remarks by Assemblymen Atkinson, Carpenter, Goicoechea, and Gansert.

Madam Speaker requested the privilege of the Chair for the purpose of making remarks.

Roll call on Senate Bill No. 5:

YEAS—37.

NAYS—Christensen, Cobb, Gansert, Goedhart, Gustavson—5.

Senate Bill No. 5 having received a two-thirds majority, Madam Speaker declared it passed.

Assemblyman Oceguera moved that all rules be suspended and that Senate Bill No. 5 be immediately transmitted to the Senate.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, March 1, 2010

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 9 to Senate Concurrent Resolution No. 1.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Oceguera moved that the Assembly resolve itself into a Committee of the Whole for the purpose of considering water rights issues.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 1:23 a.m.

Chair Buckley presiding.

Quorum present.

CHAIR BUCKLEY:

We had a very good discussion, a very good elucidation of all the issues, and I think put a lot of our questions and our intent on the record. The chairman of Government Affairs has prepared some language to be entered into the *Journal*. I would accept a motion to do so, but before I do so, I would just like to get a sense of the committee about whether this language accurately reflects our previous discussion. Assemblywoman Kirkpatrick.

ASSEMBLYWOMAN KIRKPATRICK:

Thank you, Madam Chair. I just want to put on the record that I think that there is a desire within this body to fix the issue at hand. I think that it is unfortunate that we were so engaged in the budget issues that we did not have the time, and I believe in my heart of hearts that we all

realize that it is a problem that definitely needs to be addressed. I think that this is the best way to allow for the dialogue to continue. I would ask all of you to please support this motion because I think that it is a big issue and something that we need to spend time on because it's very important for the future of our state.

CHAIR BUCKLEY:
Thank Assemblywoman Kirkpatrick. Assemblyman Hardy.

ASSEMBLYMAN HARDY:
Thank you, Madam Chair. I concur with the chair of Government Affairs and this will help the Virgin Valley Water District, which I represent.

CHAIR BUCKLEY:
Any other questions or comments? Seeing none, the chair will entertain a motion from Assemblywoman Kirkpatrick to move this out of the Committee, and under Order of Business 8 Assemblyman Oceguera will put it in the record.

Assemblywoman Kirkpatrick moved that the legislative intent regarding water issues be placed in the Journal.

Seconded by Assemblyman Goicoechea.

Motion carried.

On motion of Assemblyman Oceguera, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 1:29 a.m.

Madam Speaker presiding.

Quorum present.

Assemblyman Oceguera moved that the legislative intent regarding water rights issues be entered in the Journal.

Motion carried.

In January 2010, the Nevada Supreme Court issued its decision in *Great Basin Water Network v. Taylor* regarding the interpretation and application of Nevada Revised Statutes 533.370; specifically the effect of the requirement that the State Engineer act upon applications within one year unless certain criteria are met. At this time, the decision of the Nevada Supreme Court is to remand the matter to the District Court for consideration of the proper remedy for the failure of the State Engineer to act on applications within one year.

After calling the 26th Special Session, the Governor amended the original proclamation to include the subject of water law as it relates to the Great Basin Water Network decision. Two bill draft requests have been heard; one by the Senate on February 27th and one by the Assembly on February 28th.

After several hours of testimony, it is the sense of the Legislature that resolution of the issues raised by the Great Basin Water Network decision is of critical importance and that the Legislature should attempt to resolve these complex policy issues. However, the testimony has made clear that many of the parties potentially affected by the resolution of these issues will not be able to be heard in the remaining hours of the 26th Special Session.

It is essential that the Legislature's resolution of these issues strikes a fair and equitable balance between the rights of applicants and the rights of protestants. The Legislature recognizes that voiding the Southern Nevada Water Authority's applications and taking away its priorities because of the State Engineer's failure to act would be inequitable to the Water Authority and all other similarly situated applicants. At the same time, the Legislature recognizes that it would be

inequitable to the protestants to deny them due process and a meaningful opportunity to be heard.

In order to strike the proper balance between these equally important interests, the Legislature must provide a forum where the affected parties can thoroughly discuss the impact of the case and craft the most constitutionally defensible remedies that take into account due process, fundamental fairness and the separation of powers. Hastily passing legislation during the waning hours of this special session, without sufficient deliberation, will only raise more issues than it solves and will likely cause unintended and potentially harmful consequences.

Therefore, in order to provide for public input, adequate notice, and due consideration of the complex questions presented, the Legislature hereby strongly urges the State Engineer to hold hearings on potential resolutions of the issues presented by the Great Basin Water Network decision. The State Engineer is urged to work with the interested parties who testified before the Legislature and to provide an opportunity for input from other parties who may be affected, directly and indirectly, by resolution of the issues presented.

The Legislature urges the State Engineer to consider, at a minimum, the following issues: protection of existing water rights, the status of pending applications, preservation of priorities, and application of the protest period provisions. Because time is of the essence due to the pendency of the litigation, the State Engineer is urged to commence such hearings immediately, and make every reasonable effort to conclude his work as quickly as possible.

Finally, the Legislature urges the State Engineer to take all appropriate steps to implement recommendations arising out of such hearings which may include but not be limited to: requesting the Governor to convene a special session or requesting a bill draft for consideration in the 2011 Legislative Session.

Remarks by Assemblymen Oceguera, Gansert, and Madam Speaker.

Assemblyman Oceguera requested that the following remarks be entered in the Journal.

ASSEMBLYMAN OCEGUERA:

I rise under Order of Business 15 to talk about the legislators who will be leaving…oh, that was another time….

Madam Speaker, in all seriousness, Minority Leader Gansert and my esteemed colleagues, I want to thank every member of the Assembly for your hard work and your dedication and the service that you performed here. Thank you everyone.

We differed on issues, but we united as Nevadans to produce a balanced budget for our state. We have different priorities and we come from different parts of Nevada, but in the end we did the best we could under the circumstances. We protected the most vulnerable and frail Nevadans. We avoided many lay-offs and shared sacrifice, and by doing that, prevented the unemployment rate from rising even higher. We pushed back against the deep cuts in education and gave schools more flexibility. We made our government more efficient. We created opportunities to get federal money. We looked at large industries, and not the middle class, to shoulder some of that burden. Mining, gaming, banking, all will pay a little bit higher fees and unpaid taxes will be paid through amnesty.

Like many of you, I wanted to do more for our school children, but I know these decisions require more than a majority vote and that super majority just wasn't there. For me, our actions address some of our immediate problems, but we have a long way to go to define our priorities. Does government reflect the values of our people? Can we be more transparent and accountable and how do we pay for these critical services?

This is home to me. I was born in Reno; raised in Fallon; live in Las Vegas and I work in North Las Vegas. That is where my wife, Janie, and I have chosen to make our home and raise our family. We love Nevada as you do, so I am going to ask some questions to Nevadans. How will we educate our children? How will we create more jobs, good paying jobs? How will we care for the most frail and needy? How will we compete in a world-wide economy? How will we eliminate waste in government? Will we all share the cost of making Nevada better and will we all benefit from those improvements?

In the past several days, we have taken a stand for Nevada. We said the weakest and most vulnerable among us are not forgotten. We said that our economic expansion depends on better schools, not poorer ones. We said that in hard times, we all must accept cuts and shoulder part of the burden, but what about the future? In 11 months, 42 members will assemble in this chamber to meet the most daunting challenges Nevada has ever faced. Let's listen to Nevadans. Let's level with them. Let's not speak with the sharp voices of partisanship, but with a calm understanding that we are all in this together. Let's prepare to come together and move Nevada forward.

Thank you, Madam Speaker.

MADAM SPEAKER:

Thank you, Assemblyman Oceguera. Assemblywoman Gansert.

ASSEMBLYWOMAN GANSERT:

Thank you, Madam Speaker. I just wanted to thank everyone in this body, but I also to thank our staff. They had to really do an incredible job. Some of them have recently stepped into leadership positions, whether it is Mark Krmpotic on the other side or Tracy Raxter here. It has been a very intense couple of weeks and I appreciate all the work they have done; also Andrew Clinger over in the Governor's Office and of course, Robin Reedy and Lynn Hettrick, and the Governor himself. It seemed like an impossible task at one point in time and we did bring this together. It took a lot of hard work and I appreciate all the support that this body gave during this period. Also, our staff and the Sergeant at Arms who work here and cook for us our wonderful meals and made sure that everybody had everything that they needed, so I appreciate all that, as well as the Front Desk staff.

I was also stopped by several state employees last night and the day before. I think our being able to hold their furlough to the eight hours versus the ten hours made a huge difference to them. I think that was a sign of the great support that we all have for them. They are working very hard and I so appreciate that. I also appreciated the feedback from them because we know we make a difference when we actually get to hear it from them. So thank you everybody, from the Front Desk to Audiovisual—we appreciate all the hard work.

Madam Speaker requested the privilege of the Chair for the purpose of making the following remarks:

I too would like to thank our amazing staff, whether it is Front Desk, Sergeant at Arms, Research, Fiscal, Legal, Buildings and Grounds, Audit, Administration, Police and countless more, the session staff who came in and helped us. They just did an amazing job and I often wonder why they stay, and why they come back. I think that many of these employees, you know left at midnight and were back at 5 A.M. All you have to do is look at their weary eyes.

I also would like to compliment the Budget Division and Andrew Clinger, who worked side by side with our staff and the Governor's Office. This morning, we called the Governor's Office and asked him to add the jobs bill to the proclamation and we actually were rather shocked; he said "yes." So there is a lesson in there. Never stop trying to communicate. I didn't think the Governor would sign the Race to the Top bill—of course, I am not sure he did yet—but I was honored that he agreed to meet with me and let me give him my pitch on what schools are really like today in Las Vegas.

So as we leave, we can learn some lessons. Never stop communicating. There is no such thing as a bad idea, just ones you don't agree with, and we need to work together as Nevadans, and boy, do you need to do that in the next 14 months. This week's challenges will seem like a picnic compared to next session. We will not have half of our revenue and you have the most important job of all governmental officials—you fund schools. Schools in our state have the worst funding system of any other system in government, and you are going to have to examine this and probably take it apart, from top to bottom.

You know, the average Nevadan does not know where their tax money goes. They don't know if it is the state or the county. I can't tell you how many times I get, "you know, if you would just cut your workers' salaries in the state…" and I say, wow, they really have no idea what is going on, because it is not the state workers that are overpaid. And so you are going to

have to solve those challenges and the interim committee that is looking at our financial structure follow it. Look for solutions. Maybe you should just tear down everything as it exists and reprioritize. Who gets sales tax? Who gets property tax? Who is doing more with less? Who is most efficient? Should you have consolidation? Draft every plan; put it side by side so you don't start the discussion in February.

People are afraid of the unknown. Draft it before, through this interim committee, so you have options, because if you don't, when you come back and still don't have an education plan after taking this time, it will be like Groundhog Day, and you will just do the same thing again, except without the Sonny and Cher music to start you off. The definition of insanity is doing the same thing over and over again and expecting a different result. You have to do it. It is our constitutional duty and it is not working right now. So, diversifying the economy, broadening the economy, taking what we are doing and reexamining it and recreating it—you can do it. We have some fabulous leaders in here and I feel so comfortable with the people who will be following in my footsteps. You are ready. You will return and you will come up with solutions that make sense for our great state.

I have been proud to be your Speaker, again, I thought I was off the hook, but like the Godfather, they don't let you go, but I am proud to have been able to serve this past week and I thank you all so much for your incredible hard work.

As soon as the Senate is done debating, I will be appointing the committees to notify the Senate and the Governor that we are prepared to adjourn *sine die*, so I will take any further remarks, and if there are none, we will just recess and call you back in a few minutes. I can't imagine the Senate will be too much longer. You noted that irony in my voice, didn't you?

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 1:44 a.m.

ASSEMBLY IN SESSION

At 1:48 a.m.
Madam Speaker presiding.
Quorum present.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 2 and 6; Senate Bill No. 5; Senate Concurrent Resolution No. 1

Madam Speaker appointed Assemblymen Oceguera, Anderson, and Gansert as a committee to wait upon His Excellency, Governor Jim Gibbons, Governor of the State of Nevada, and to inform him that the Assembly was ready to adjourn *sine die*.

Madam Speaker appointed Assemblymen Bobzien, Smith, and Goicoechea as a committee to wait upon the Senate and to inform that honorable body that the Assembly was ready to adjourn *sine die*.

A committee from the Senate, consisting of Senators Copening, Parks, and Amodei appeared before the bar of the Assembly and announced that the Senate was ready to adjourn *sine die*.

Assemblyman Bobzien reported that his committee had informed the Senate that the Assembly was ready to adjourn *sine die*.

Assemblyman Oceguera reported that his committee had informed the Governor that the Assembly was ready to adjourn *sine die*.

Assemblyman Oceguera moved that the Twenty-Sixth Special Session of the Assembly of the Legislature of the State of Nevada adjourn *sine die*.

Motion carried.

Assembly adjourned at 2:13 a.m.

Approved: BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL
Chief Clerk of the Assembly