NEVADA LEGISLATURE

Twenty-Sixth Special Session, 2010

SENATE DAILY JOURNAL

THE FOURTH DAY

CARSON CITY (Friday), February 26, 2010

Senate called to order at 10:56 a.m.
President Krolicki presiding.
Roll called.
All present.
Prayer by the Chaplain, Pastor Albert Tilstra.

Dear Lord, in the midst of great activity today we ask You to remind us often of Your invisible presence.

That out of confused issues may come simplicity of plan
Out of fear may come confidence
Out of hurry may come the willingness to wait
Out of frustration, rest and power.
This we ask in Your name.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REMARKS FROM THE FLOOR

Senator Horsford requested that his remarks be entered in the Journal.

Why aren't corporations paying their fair share?

1. Why should the state subsidize your cost of doing business?

It costs taxpayers money to regulate your businesses, to ensure that your businesses are following state laws, rules and regulations. Why should Nevada taxpayers foot the bill for that regulation?

The Gaming Control Board, the Athletic Commission, other boards and agencies are paid for by taxpayers. But they were created to ensure that businesses are following state and local laws. It's time that you pay for the operation of the agencies that regulate your industries. We can longer place that burden on taxpayers,

Casino operators, manufacturers, truckers, Nevada taxpayers should not be paying the bill for you to make money.

2. How will you find your next generation of employees if we fail to provide young Nevadans with a good education?

This is a tough economy, but there are sectors that are doing well: Mining, Banking and Insurance.

Each requires an educated workforce, graduates who excel in math, science, reading, writing, and speech.

3. Do you want to continue to pull lucrative minerals from the ground, especially gold?

You need home-grown workers who understand all levels of the business, and for most that knowledge comes with good schools, a stable home, and a sense of optimism that comes with growing up and remaining in a state with a vibrant future.

4. How will you grow your businesses if you have to look out-of-state for good college graduates?

We've all heard the myth; the casino industry doesn't require college-educated workers. Nothing could be further from the truth. Walk through Bellagio, Mandalay Bay, City Center, the Silver Legacy or any of the casinos that help drive this state's economy, and top-notch college graduates are working at all levels of the business.

5. Where will your customers come from if we don't provide all Nevadans with a stable tax structure?

No jobs, no customers. Limited education, limited earning power. Poor health care system, fewer seniors moving here and buying your products. Weak public safety system, the more likely it is that your customers will leave the state.

6. The United States Supreme Court ruled 100 years ago that corporations have the same rights as people. That also means our corporations have the same responsibilities as people.

Your tax money pays for our roads, bridges, public parks, museums, Veterans programs, school lunch, and aid to college students, the education of our youngest and health care for our most vulnerable. Those responsibilities come with citizenship, and the courts have made it clear that corporations are citizens.

7. What would you do with without government to develop your customer and employee base?

Your customers and workers benefit from fire protection, police, schools, roads, emergency communication equipment, water projects, power grids, telecommunications networks, flood control and all of the other infrastructure projects that are provided by taxpayers through state and local government. Without that mix of taxpayer-supported, government services you'd be out of business.

8. A 2008 study by the United States. General Accountability Office found that most corporations doing business in this country, including the vast majority of foreign companies, pay no income taxes. How can companies, especially foreign businesses, generate so much revenue but fail to contribute to the country that provided the setting for them to make that money?

9. The Carnegies, the Rockefellers, the Mellons all realized that they had a responsibility to personally invest in the country that made them wildly wealthy. Today, the names: Gates, Johnson, Allen, Murren, Wynn and Adelson, have all given great amounts of personal wealth toward the development of this country and this state. Yet, there are many more successful corporate interests that need to step, particularly in these tough economic times.

10. But wasn't Nevada and the American west built with little or no government?

Nevadans certainly take pride in their Libertarian streak, which values personal freedom. Yet, The West and Nevada wouldn't have been developed without massive investments and tax breaks provided by taxpayers. From federal mining laws, through the development of colleges and military bases, to the construction of dams, roads, bridges, the interstate highway system, the power grid, government laid the foundation for the successes your business have and have had.

Healthy state and local governments have been key to the development of this state and your businesses success. It is key that government continues to foster our future success, but that will only come with the support of your businesses.

Senator Amodei requested that his remarks be entered in the Journal.

I appreciate the remarks of the majority leader and the invitation. It is great that we are inviting information, and it is nice to talk about the private sector. In the interest of balance and since we are inviting information, I would like to invite somebody to brief this Senate during the course of this Special Session on the impact of 13-percent unemployment in this State. I would like them to brief us about what under-employment is, and talk about those who have quit looking for work in this State. Those are very important facts when you talk about the private sector, which includes corporations and businesses, whether you label them "advantage" or not. That is an important fact for us to know when we make those value judgments about trying to provide that safety net and those bottom-line services that the State is responsible for.

We have had a good focus on what the expenditures are, but hopefully we will be responsible and not just conclude that there must be money out there. When we talk about the conclusion of the 2009 regular session, we are talking about one-shot deals of our own creation and from the federal government, as well as tax increases of nearly $2 million, and it will have to be dealt with by you in 2011.

We start this session with an ostensible debt of $880 million that is being dealt with by bills that do sweeps, bills that rely on possible additional support from the federal government and fee increases. That is nearly $3 billion you will have to deal with 2011, and somewhere in the neighborhood of a $7 billion biennial budget. At some point in time, those numbers have to come home. At some point in time, that money comes from the private sector. That comes from Democrats, Republicans and independents in the private sector.

When we invite information, I would like to know some information on what the real story is with real estate in the commercial sector for the next two years, what real estate is in the residential sector for the next two years. I want to know the sales tax impact of the lack of construction, where we hooked up 24,000 new homes in Clark County over the past few years that are not going to happen. What are the trickle-down effects of that on sales tax? What can we realistically expect?

And then we talk about a phrase that is new to me today: privileged industries. I will not speak for my colleague from Tuscarora, but we talked about an industry, for example, that pays $14,000 a year state and local wages per employee. I will not tell you what that industry is, but if you do not know, you have not done your homework. I will not talk about an industry with an average wage over $70,000 a year per employee. I will not tell you what that industry is, but your depth of analysis is too shallow if you do not know what it is. That industry's folks can afford the homes in their communities, they can afford their healthcare deductibles, and they are all drug- and alcohol-tested, so they are not in the public safety system. You may ask yourself as policy makers, "Why are we going to get them?" Because the price of their commodity happens to be up. That represents a phenomenally shallow depth of analysis, in this legislator's opinion. I am not speaking for anybody else.

When we talk about the work that has been done by colleagues of mine who have chaired the Commerce and Labor Committee over the 14 years I have been here, let us please take a look at what the true health of the private sector economy is in Nevada. Before we sweepingly label some industries privileged, or whatever the new nomenclature is, and before you go to these folks for more, you must ask: (a) Is it sustainable? (b) Are they creating the impact? (c) Are we going to prolong what our former state archivist described as a depression in the State of Nevada?

I hope I am wrong, and I look to be excoriated for it if I am. But if any of you think this is going to be over in 2011, God speed to you, because we are in serious private sector economic trouble. When you make your policy choices to increase the fees or do these continuing sweeps to keep our budget as high as it is, and then those of you who come back in 2011 have to figure out how to fill that hole, good luck with the private sector that is in the emergency room along with the public sector.

I do not say that to pass judgment on any of you; you are all responsible the same way all the rest of us are. It is not an easy job. I do not envy the Majority Leader and respect the undertaking you have taken on. But before we start getting too far down the road into what are now private sector and public sector—it is one State, and the income to fund local and state government does come from the private sector—let us at least take the blood pressure of the patient before we wheel him into the hospital and start administering the cure.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering issues relating to the state's budget shortfall with Senator Horsford as Chair and Senator Mathews as Vice Chair of the Committee of the Whole.

Motion carried.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 11:17 a.m.

IN COMMITTEE OF THE WHOLE

At 11:18 a.m.

Senator Horsford presiding.

Considering issues relating to the State's budget shortfall.

The Committee of the Whole was addressed by Senator Horsford; Brenda Erdoes, Legislative Counsel; Senator Wiener; Senator Raggio; Senator Townsend; Senator Amodei; Senator Lee, Senator Carlton; Ross Miller, Secretary of State; Senator Care; Senator Schneider; Tim Crowley, President, Nevada Mining Association; Senator McGinness; Senator Rhoads; Senator Nolan; William Vassiliadis, Nevada Resort Association; Senator Cegavske; Veronica Meter, Las Vegas Chamber of Commerce; Tray Abney, Reno-Sparks Chamber of Commerce; Ray Bacon, Nevada Manufacturers Association; Mary Lau, President, Retail Association of Nevada; Terry Graves, Henderson Chamber of Commerce; Paul J. Enos, Nevada Motor Transport Association; Bill Uffelman, Nevada Bankers' Association; George Flint, Nevada Brothel Owners' Association; Senator Coffin; Bob Cashell, Mayor, City of Reno; Geno Martini, Mayor, City of Sparks; Senator Amodei, Jeff Fontaine: Nevada Association of Counties and Constance Brooks, Clark County.

Senator Horsford requested that all remarks in Committee of the Whole be entered in the Journal.

SENATOR HORSFORD:

We are going to take up the revised amendment based on those that were provided to us from the hearing yesterday evening. We have Amendment No. 4 to Senate Bill No. 3. Legal Counsel is here to walk us through these additional changes.

BRENDA ERDOES (Legislative Counsel):

The differences between this amendment and the previous amendment that you previously considered is that there was specific authority for all local government employers to require their employees to take unpaid furlough leave. This amendment, in section 1, subsection 4, changes that provision to make it so only school districts specifically are given this authority for furloughs for their employees.

Another change is an exception to the furlough plan as a whole and to the four ten-hour days provision for those licensing and regulatory boards and commissions that are exempt from the Budget Act. After the first furlough bill passed in 2009, we were called upon to issue an opinion. There was a question as to whether the furloughs applied to the various boards. We did a full analysis and found that it did not apply to those boards and commissions because they were not part of the Budget Act.

The provisions for special allowances or salary adjustments for classified employees, such as bilingual employees, can no longer be granted to new people after the effective date of this act. There is also a grandfather clause that prohibits future adjustments of this type for classified state employees. Another grandfather clause provides that those classified employees who are currently receiving these adjustments in their pay would continue to do so as long as the person continues to meet the requirements that were in place at the time it was granted to them.

An additional change removed a provision for local governments in section 8. Previously, we had asked to convert all of the references to one and a quarter working days to hours for both the state and local governments. We are not doing this for the rest of local governments, only school districts. We needed to only have the conversion to hours for the state portion of the statutes to make this all work.

I will be happy to answer any questions.

SENATOR WIENER:

I think something might be missing in part of the amendment applying to Corrections officers. In the 3 consecutive 12-hour shifts, should we have in a 7-day period "and then not less than 7 12-hour shifts during a 14-day period"?

MRS. ERDOES:

You would actually have 3 consecutive 12-hour shifts and not less than 7 12-hour shifts. It is during the same 14-day period. That is how you get to 84 hours.

SENATOR RAGGIO:

The new section, 13.1, would allow employees to receive special compensation after the effective date of this act as long as they continue to meet the qualifications. We referenced 5 percent that is paid the employees under certain circumstances where they may be bilingual or in a special supervisory position. Is there some way to identify what other supplemental pay they are now getting that would be removed from this? There are things like shift differential, remote travel and so on. What is intended to be covered by this exclusion provision?

MRS. ERDOES:

We intended this provision to cover are all the things that you named. We were concerned about making a specific list because there is only one of these in statute. The rest are granted by the State Personnel Commission. We can talk to them to get an exhaustive list if you would like.

SENATOR RAGGIO:

What concerned me is that in our discussions about reductions, we raised the issue of the 5-percent differential pay for the items I mentioned. Are things like shift differential and distance travel part of this as well? I do not know what we are covering and if we are excluding from our consideration matters that have some serious financial impact, matters that were part of the proposal to meet the 10-percent cut that was required for all agencies including the Department of Corrections.

SENATOR HORSFORD:

The way this is written, there would be grandfathering of existing employees who receive those differential increases. For any new employee hired, they would not be granted those benefits unless, separate from this bill, we decide otherwise during this Special Session. Based on where we are today, those final decisions have not been made.

SENATOR RAGGIO:

Some of those are significant amounts that were considered when we discussing the 10-percent cuts. We need to know to what extent the deletion of those amounts will reduce the amount of cuts percentage-wise that would be in the corrections agency. That would be useful information.

SENATOR HORSFORD:

I have asked Fiscal to answer that. I know that we are working on trying to get a restoration list and what those cut reductions would mean under the scenario whereby some of these cuts are restored.

MRS. ERDOES:

I need to clarify the question you asked about what this amendment did. It actually prohibits the new 5-percent salary adjustments for anyone. That is a distinction. It can be changed to differentiate between new employees and existing employees; we can do that. Currently, this says no additional 5-percent supplemental adjustments would be made.

SENATOR HORSFORD:

There are no benefits you are entitled to as a new employee unless we determine that they are. Are you saying an existing employee who assumes these responsibilities would be prohibited after July 1, 2010, from getting the additional pay.

MRS. ERDOES:

If you want to go the other way, we can make that change very quickly for you.

SENATOR HORSFORD:

That would be my preference. What is the preference of the Committee of the Whole?

SENATOR TOWNSEND:

The way Senator Horsford described it was the way many of us believed the clause was intended. In fact, those that are currently employed and would be hired up to a certain date would be entitled to receive those additional payments based on their skill sets or job requirements. Those hired after a certain date would not.

SENATOR HORSFORD:

Are there any other questions or issues with the language?

While we are making that change we would be happy to hear any additional public comment on this amendment. We have tried to incorporate those concerns that were brought to us.

We will be in a recess while we wait for the corrected amendment.

Committee in recess at 11:34 a.m.

Committee called to order at 1:25 p.m.

SENATOR HORSFORD:

We will take up Amendment No. 5 to Senate Bill No. 3. Mrs. Erdoes will walk us through the latest iteration of one of the technical amendments.

MRS. ERDOES:

The first change is to the Legislative Counsel's Digest. The amendment adds language explaining that these adjustment apply to employees hired on or after March 1, 2010.

The next change is to section 3, subsection 4. We have added language to clarify that both overtime and differential pay adjustments are calculated based on the employee's unreduced salary.

The next change is to add section 7.5 to the bill. This is a section of the NRS that needed to be amended because it provides for benefits for specific classes of employees. We have added the provision that these adjustments apply to employees hired before March 1, 2010. This now matches the changes made to the NAC.

The next change from the last version of the amendment is in section 8.5, adding subsection 4. This provides that these adjustments may not be given to employees hired on or after March 1, 2010.

The last difference between this amendment and the last one you saw is the new section 13.5, which replaces the old grandfather clause in the last version. This section specifies the actual NRS and NAC sections we are talking about. It addresses Senator Raggio's question as to what specific adjustments we are covering. This section also makes it clear that it is the Legislature's intent that these adjustments continue to be paid. There was some confusion about that, so we thought it would be better to clarify it in statute. We also added the prohibition on adjustments for new hires to the effective date list, which is section 14.

SENATOR TOWNSEND:

With regard to those individuals now working a 4-10 workweek, it was discussed and agreed to, starting with the comments of the Chair, that although they would have one 10-hour furlough day a month, they would only have an 8-hour reduction. I am looking at section 2, subsection 2, paragraph (a). I understand they would be taking 120 hours of furlough, but I did not find a reference that there would only be an 8-hour reduction.

SENATOR HORSFORD:

That is not in this bill. That is in a companion bill that is coming from the Assembly, once we reach consensus.

SENATOR RAGGIO:

With regard to section 14, the sunset provision, is it true that these exclusions for new hires would only be during this biennium? Does this mean they would become eligible for pay differentials after that, unless it is reinstated?

MRS. ERDOES:

Those prohibitions, sections 7.5 and 8.5, are not included in the sunset, no.

SENATOR RAGGIO:

I am not advocating one way or the other; I just wanted to understand.

SENATOR AMODEI:

I want to go back to Senator Townsend's discussion regarding section 2, subsection 2. If we support this bill, it will be with a leap of faith. We will have to hope that things roll along in the companion bill from the Assembly. Is that the case?

SENATOR HORSFORD:

Let me explain the intent from the standpoint of what we are trying to work towards. State workers took a heavy impact in the decisions made during the 2009 Legislative Session from mandatory furloughs and additional reductions to health and retirement benefits. Depending on the level of pay, these cuts could have resulted in pay reductions of 11 percent for some workers. For this reason, there is strong legislative consensus that to the degree we can find a way to pay for it, those workers would not have to bear the additional impact of losing 2 more hours of pay in the implementation of the 4-10 workweek. That would be an additional pay cut of 1.16 percent, approximately $6 million. We believe that through legislative agreement, we should be able to find $6 million so state workers are not impacted further by the decision to go to a 4-10 workweek. However, that is not in this particular bill because we have not yet reached a consensus on how we can pay for that. That would be corrected when we reach consensus in the companion bill. That is the intent. If we are successful, the 4-10 workweek will not cause a further pay reduction to state workers.

SENATOR AMODEI:

Thank you for the explanation. I have nothing but respect for my colleagues at the south end of the building, and I look forward to their work product.

SENATOR LEE:

I want to get clarification, and maybe it is something I just want the Board of Examiners to hear. With regard to the 4-10 workweek, does a small office in a remote state park, such as the Valley of Fire, constitute an office for the purpose of the provisions in section 5? We are doing everything we can to keep dollars in Nevada. If we want a vacation, we take what we call stay-cations—we stay in Nevada and spend our money here. I have been a big proponent of that. However, if we are going to encourage people to spend their weekends in state parks, it does not do us well if we do not have anyone at the office to take the money. If all we are going to do is send a ranger through to make sure they are safe, we really have not done anything good for the residents of Nevada. My question is whether a remote location is the same as an administrative office, as far as having to shut down on a Friday. I want to get this on the record so someone will have something to follow up on.

MRS. ERDOES:

The way this bill is constructed, the word "office" is loosely construed to mean any situation in which an employee works. I believe it would apply to the situation you describe. It would also allow them to apply to the Board of Examiners for an exception to the 4-10 week, if they needed it. It is also possible to get an exception only to the Friday closing.

SENATOR LEE:

My concern is with those offices being closed Friday, Saturday and Sunday. Why would we have state parks open only on Monday, Tuesday, Wednesday and Thursday? We need to have them open when they are going to bring in value, especially since there is a chance we might be raising the entrance fees. It does us no good to have a park that is closed and raise fees when no one will use it. I would like to put this question on the record and make sure the Board of Examiners realizes this is something we are trying to offer the residents of Nevada. We want to work with people to stay in Nevada on vacation.

SENATOR HORSFORD:

What Legal Counsel indicated is that the provisions allow for exemptions or waivers to both furloughs and to Friday closure, and the process is outlined in this bill. You are asking that the Board of Examiners take into account the importance to consumers of specific offices being open on Fridays when they make those decisions. Is that correct?

SENATOR LEE:

That is right. I look forward to working to make sure the intent is there. The waiver process has always bothered me. The exemption part has been held in such a tight grip. I want to make sure we can do something with that.

Senator Wiener moved to amend and do pass Senate Bill No. 3 with Amendment No. 5.

Senator Townsend seconded the motion.

SENATOR CARLTON:

As you can see by the number of amendments we have done on this bill, dealing with the furlough and leave portions has not been an easy matter. My response to all the e-mails I have received from people saying we should just lay off state employees and cut their pay is to say it is not as easy as it sounds. This is not an e-mail issue. These are all families that are going to be impacted by every decision Amendment No. 5 deals with. For that reason, I will be opposing the bill.

SENATOR TOWNSEND:

I want to compliment the Chair of the Committee on Commerce and Labor on her efforts in this. I have worked with her for 12 years, and I know how intensely she works, how passionate she is about the issues. I have never questioned her commitment to the process. Yesterday was not necessarily a labor of love, but it needed to be done. I would like to thank our staff, starting with Mrs. Erdoes and all her professionals, for working so hard to turn this around quickly and deal with the complexities of trying to understand the sophisticated nature of the intent we put into this bill. I want to make sure people are aware of those things. We get a little tense in here sometimes, and that is okay, but we need to recognize those who worked so hard.

SENATOR HORSFORD:

I would like to add to those remarks. I appreciate Senator Carlton and our Counsel, and all of those who worked on a bill that was technically difficult. I believe we have asked all the appropriate questions to try to ensure our legislative intent is clear. We have worked the best we could to implement a policy that will be advantageous in the operation of state government. We did not hear much testimony on this during this Special Session, but during a previous IFC hearing, we were informed that this model came from the Utah Initiative for a 4-10 workweek. The report on Utah's experience identified increased productivity, increased efficiency and streamlining of certain functions as a result of the change. While the closure of state offices on Friday for the next 16 months will have an impact on all of us as Nevadans, we have attempted to craft in this legislation the best possible way to implement it and have accountability reports given to the IFC where appropriate. I appreciate all of you who worked to ensure that was made possible.

Motion carried. Senators Carlton and Coffin voted no.

SENATOR HORSFORD:

I will close the hearing on Senate Bill No. 5 and open the discussion on fees.

ROSS MILLER (Secretary of State):

We were asked, along with every other agency, to provide responses to a number of scenarios for cutting our budget. The first scenario we came up with would have reverted 10 percent of our budget by using Auction Rate Securities (ARS) funds in a settlement we reached and offset our General Fund expenditures by $1.5 million over the biennium. On Friday, February 12, we were asked to come up with a separate scenario whereby the ARS funds we had intended to use to offset our General Fund expenditures were swept into the General Fund, as well as to decrease our expenditures by an additional 10 percent on top of the 10 percent we previously proposed.

We have provided the Committee with a packet of information that includes a six-page letter outlining the impact those cuts would have on the people of Nevada. The bottom line is that by our estimation, additional cuts to the Secretary of State's Office would have a catastrophic effect on our ability to provide the services the business community in particular expects. This is for a number of reasons. First, in 2008 we laid off a significant number of personnel in our office. In the last biennium, we cut probably more than any other state agency and reduced our expenditures by 21 percent. At the same time, we added additional services, including the business license fee, and we are currently processing those. The furloughs, which were added in October 2009, have had a definite further impact. To give you an idea of the impact and the type of outcry we are getting from the business community, in September of last year it took us about 4 days to process business filing paperwork. If you called our office, hold times were about 10 to 15 minutes. Today, processing takes around 37 days, and hold times are over an hour. People are frustrated and often angry when they reach our office. I believe that if the service levels continue to drop at this rate, we will likely lose a lot of those customers, which will collapse a significant revenue stream for the State.

Our office generates about $125 million toward the General Fund. That is over $1 million per employee. We are making every effort we can to eliminate inefficiencies, process the paperwork as quickly as we can and look for additional opportunities.

We were also asked by Fiscal staff to come up with a proposal to generate additional revenue for the State. We have summarized those on a one-page summary in your packets, as well as a printout of a PowerPoint presentation going into some of the recommendations in detail. We scoured the work of the office and came up with revenue from a number of different sources, the first being the Securities Division. Some of these recommendations can be implemented without statutory changes, and in fact we have implemented some of them already. The others would require amendments to the statutes governing fees in our office.

The first fee increase I want to address is the Securities Exemption Fee. We implemented that effective February 17, the same day I testified in front of the IFC. That reflects an increase in the fee from $300 to $500, with a projected revenue increase of $3,387,507 over the biennium. We have also standardized many of the agency fees for expedited services. As many of you are aware, we offer expedited processing for some of our filings. Fees from $75 to $125 will get your paperwork processed within 24 hours. We project that increasing all fees to $125 will bring in an additional $901,600 over the biennium. Neither of these changes require statutory changes, and we made them as a matter of policy. Those two changes will generate about $4.3 million in additional revenue over the biennium.

We also have a number of recommendations that will require statutory changes to implement. With respect to the Securities Division, we recommended increasing the fees associated with licensing. These are voluntary licenses and fees people pay in order to engage in the securities industry in Nevada. There are six different areas where we would recommend increasing the fees, for a total of $2,667,400 projected revenue over the biennium.

In the Commercial Recordings Division, we have come up with a series of recommendations to try to generate additional revenue. Those would total $300,933 in FY 2010 and $902,801 in FY 2011. Those fees do not target the bulk of our filing volume, since those fees were recently increased. We are already seeing declining revenues, and we are trying to avoid a further decline in volume due to increased fees.

We have also identified a number of miscellaneous fees. Increasing the Apostille and Authentication fee from $20 to $30 would generate an additional $182,500 over the biennium. The Notary Training Fee has already had some money swept as a result of yesterday's legislative action; we would propose allocating 75 percent to the General Fund, resulting in $153,600 over the biennium. Reallocating the remaining balance of the Domestic Partnership Registration fee, which was instituted in the last regular Session, to the General Fund would result in an additional $50,000 over the biennium.

All in all, fees from the Securities Division will bring in an estimated $6,054,907; from the Commercial Recordings Division, $1,203,634; from other agency fees, $386,100; and from standardization of expediting fees, $901,600. The total projected increase in revenues is $8,546,241 over the biennium.

As part of that scenario, we request that a couple of our positions be restored in order to return service levels to those the business community expects. As I mentioned, in 2008, we had extensive layoffs and eliminated 16 percent of our staff positions. Those positions are detailed in your packets. We requested that 6 of the 19.5 eliminated FTE positions be restored, which I am confident will help us reduce processing times back to an acceptable level and hopefully prevent companies from choosing to move to another state.

SENATOR RAGGIO:

Have you already implemented the first two items on your list, the increases in the Securities Exemption fee and the expedited processing fees?

MR. MILLER:

Those have been implemented effective February 17, 2010. Without any additional statutory changes, we estimate we will be bringing in an additional $4.2 million for the State as a result of those fee increases.

SENATOR RAGGIO:

Your handout notes that the six changes from the Securities Division could be implemented March 1 if NRS 90.360 were modified. What kind of impact would those fee increases have on those who would be required to pay them? These are securities investment people generally, is that right?

MR. MILLER:
Yes. These are professional licenses. Before they issue securities in Nevada, they have to pay this licensing fee. These are annual fees, the bulk of which are sales representative fees that account for about $2.3 million in our projected revenue increase. We are proposing that the securities sales representative fee be raised from $100 to $125 a year.

SENATOR RAGGIO:
Nobody likes to have their fees increased. Have you had any input from those who would be affected by these increases that the amounts are onerous?

MR. MILLER:
I do not believe it would be onerous. We were careful to single out fees that in our estimation will not result in a decline in our filing volume, since we want to maintain the same levels and increase fees to generate additional revenue. An additional $25 a year, in our estimation, is reasonable and does not go outside the bounds of what we are looking to achieve.

SENATOR RAGGIO:
We pride ourselves on inviting incorporation within our state, trying to compete with those states that enjoy a reputation of welcoming business, such as Delaware. Would these kind of fees set us back from that kind of a situation, or would we still be comparable?

MR. MILLER:
I believe these fees would still allow us to maintain our competitive edge. These fees, especially those in the Commercial Recordings Division, are supported by the Nevada Registered Agents Association. Their president is here today and can testify, if you would like. Commercial registered agents account for about 60 percent of all the filings in our office. Their biggest concern is that if service levels remain at the current unacceptable level, many of their customers will choose to incorporate in other jurisdictions and we will see a mass exodus from Nevada. That is the biggest threat.

There are a number of reasons companies may choose to incorporate in Nevada. We estimate probably 80 percent of those entities on file are not headquartered in Nevada. They choose to incorporate in Nevada because of our efficiency of filing and our low fees, which are still competitive but no longer the price leader. As I said, the efficiency of filing has declined significantly. That is the biggest concern for our office, and for the business community as well. They are looking for those service levels to be restored, which is reflected in this proposal.

SENATOR RAGGIO:
The next three items on your list deal with commercial recordings fees. Are those increases that would seriously impact the financial sector in our state?

MR. MILLER:
I do not believe those fee increases would have a significant impact. We are likely to maintain business generated by the UCC fees, trademark fees and dissolution fees irrespective of the price, as long as it does not go so far out of bounds as to lose our competitive advantage over other jurisdictions. The biggest area we need to worry about is the filing fees that are annual, the renewal of annual lists, the business license fees.

SENATOR RAGGIO:
Those are not on this list.

MR. MILLER:
No. We deliberately left those out because they were increased in the last Legislative Session. That is where we have seen the biggest blowback from the business community, in regard to those annual fees. That is why I think any additional increase may lead to a decline in revenue.

SENATOR RAGGIO:
The last item on your list is the domestic partnership registry fee. This is not a new fee; this is just a reallocation of existing funds. What is the fee?

MR. MILLER:
I believe it is $55.

SENATOR RAGGIO:
You are not suggesting raising the fee. Is this just a reallocation of some money that has come in as a result of those fees?

MR. MILLER:
I believe when that legislation was put in place, it was not considered to be a revenue generator. In fact, we have seen such a significant volume of people filing for domestic partnerships that we propose the Legislature sweep that money into the General Fund.

SENATOR RAGGIO:
I believe you said your proposal would be in lieu of the further 10-percent cut that was being sought from your office, and that, in order to accomplish this, you would require retaining six positions that would otherwise be laid off. Am I interpreting that wrong?

MR. MILLER:
We proposed these additional fee increases to revert to the General Fund to offset the additional cuts requested.

SENATOR RAGGIO:
This would be in lieu of the further 10-percent reduction? Would it then require 6 additional employees?

MR. MILLER:
That part is not required. We are requesting it in order to try to reset our service levels toward acceptable levels, restoring some of the positions we laid off in 2008 as part of our 21-percent expenditure reduction plan. The shortfall in staff is resulting in extended processing times that are unacceptable to the business community. We think that by restoring those 6 positions, which would be at a cost of about $300,000 in FY 2011, we would be able to improve service times and hopefully not jeopardize a significant revenue stream for the State.

SENATOR RAGGIO:
Thank you for that explanation. Do you need six additional employees?

MR. MILLER:
Yes, without question, especially with the 4-10 workweek that is being considered. We are already significantly short-staffed. Without those additional people, processing times are likely to spiral even further, which could jeopardize a significant revenue stream for the State.

SENATOR CARE:
The statutory definition of "security" is fairly far-reaching. Most people might think it is just stocks, but it is bigger than that. Could you give the body some idea who we are talking about when we talk about securities licensing?
Secondly, I would like to know when these fees were last raised. If you do not have that information with you, you could get it to us later today. In the years I have been here, we have

often raised fees. As you pointed out, we increased some corporate filing fees last Session. One of the things we always look at is when was the last time those fees were raised and by how much. One of the factors I always look at is what should the fee be when adjusted for inflation.

MR. MILLER:

With respect to the increased fees in the Licensing Division, many of these, the largest portion of the fee increase is reflected in the sales representative fee. Those are often governed at the federal level through FINRA, which is the private association that regulates the securities industry. Anybody that issues securities in Nevada would be subject to that fee. It is analogous to a professional license, similar to what you would have to pay to the bar association in order to practice law. That is an increase from $100 to $125.

We have already increased the securities exemption fee from $300 to $500. About 95 percent of those who file securities exemption fees are applying for what they refer to as a Regulation D filing. This is a filing that you file at the federal level with the SEC, after which you file a simple document with our office saying you have applied to meet the exemptions at the federal level for issuing the security and should not be subject to regulations. When you do this, you pay a fee to our office to put us on notice that you will be offering that security in Nevada also.

Frankly, that is an area that is entirely under-regulated. That is the area that resulted in the fraud we saw in the Stanford case and the Madoff case. They are not regulated by the SEC; they do not review those filings in any way whatsoever, and the states are preempted from reviewing those filings. I do not think an additional $200 to be able to issue securities for something we will not be regulating in any capacity is going to have a detrimental impact.

With respect to the last time we increased those fees, it varies. Many of these were increased in the 2003 Session. Some of them date back a longer time. Apostilles, I believe, were last increased 30 years ago. We have tried to be careful not to increase fees that were increased in the last Session. We are still trying to determine the impact of those increases, though we have seen decreases in revenue across the board.

SENATOR LEE:

The letter you gave us includes a paragraph about the possibility of increasing filing fees for candidates for elective office. What was your thought about putting that discussion in this document?

MR. MILLER:

We were asked to scour the office to try to identify any potential sources of additional revenue for the state. The Elections Division generates an insignificant amount of money for the State, less than 1 percent of everything we generate. The thinking was that some of those fees have not been increased since 1991 and could perhaps be revisited. As you are aware, not many candidates will file with our office, only the statewide candidates for any Senate or Assembly positions that cross county boundaries. By increasing filing fees for local candidates, the State might be able to sweep those additional funds to the General Fund. Because of the short timeline, we were not able to project how much money that might raise, but it is something that could be considered in the future.

SENATOR SCHNEIDER:

I am not certain I heard correctly. The increase we enacted last Session on the LLCs was about a 100-percent increase, I think. You indicated there was some pushback in our revenue, or the number of LLCs recording has declined. Is that because of the increase in the fee or because of the economy and people just dropping their LLCs?

MR. MILLER:

It is difficult to analyze. Certainly, some of it has to do with the depressed economy. Not as many people are renewing their businesses. We are getting some feedback that some entities may be choosing to relocate to other jurisdictions because Nevada has lost its price point in the market, in that we are no longer the low-cost leader. What happened in the last Session, you recall, was that the business license fee was increased from $100 to $200. It was transferred from the Department of Taxation to our office because there was a tremendous amount of uncaptured revenue. That is, the Department of Taxation was supposed to collect that fee from any entity on file with our office, but because the systems were not integrated, they had no idea who they were supposed to be collecting from. We estimated that between $15 million and $30 million in additional revenue could be brought to the State by moving this function to our office.

The feedback we have gotten is that people are angry because they say they used to have to pay $200 the first year they set up business, and now that fee is $400. However, that is not true. They were supposed to pay $200 with our office for the initial filing fees and a $100 business license fee to the Department of Taxation, but they were not paying it. Therefore, it was really an increase from $300 to $400. That has resulted in frustration. The biggest source of frustration is a problem you are faced with every day: people asking why the fees went up and the service levels went down. There is no magic formula for this. You cannot cut resources without a corresponding decline in service. Most of the money we collect goes to the General Fund. Only about 11 cents on the dollar is retained in our office to maintain the operating efficiencies we have. We have a budget of about $11 million, and we send $125 million to the General Fund.

SENATOR SCHNEIDER: I would like to make the statement that I have some LLCs for estate planning. They really do not do anything; it just where you put properties for estate planning. My fees went up. When it was time to record our certificates this year, my wife called the office and was put on hold for an eternity. When she finally got through, she told them she was worried because she was trying to beat the filing deadline. She was told that everybody was behind and that the office would not be handling "all that" for another three months because the workload was so great and they were so far behind because of the steep cuts made in your office.

It would be my recommendation that we do something to rectify this situation. The testimony is that we are losing business because of the lack of personnel. The Secretary of State's Office is like any other business: you need X number of personnel to run your business. We ought to move forward with some of these recommendations.

SENATOR HORSFORD:

Mr. Miller, we will be following up on your proposals and recommendations. Thank you for working so hard to identify ways to address the budget shortfall and improve the efficiency of your office. I know the people of Nevada appreciate it.

Next, we will hear from some of the representatives of the private sector. In the spirit of keeping this positive and productive, I would like to offer some suggestions on how we can approach it. We want to hear from as many of the representatives who are here and whom we invited to speak. We want to specifically know any ideas you have about solutions and ways you can contribute to solving the shortfall. Also, as Senator Amodei said earlier, we want to know about the hardships in your industry because of the economy. We will start with the Nevada Mining Association.

TIM CROWLEY (President, Nevada Mining Association):

Over the last several weeks, there have been numerous discussions between the mining industry, Legislators and the Governor's office. Nevada's mining industry fully recognizes the gravity of the fiscal crisis you have to deal with, and we commend you all for rolling up your sleeves and taking on this daunting task. Our conversations have revolved around how mining can help to minimize the cuts you have to make to services mining consumes and utilizes, that all of us in this room as Nevadans depend on. We heard your speech earlier, Mr. Chairman, and share your view that we have to invest in this State and in our future. Mining has always lived up to that task.

We have been asked over the last few weeks to consider various ways to participate more, and we have been open to those proposals. A proposal was presented to us today that would include a fee on mining claims. We believe this temporary fee will not have an impact on mining that we cannot sustain, at least temporarily.

We are here to continue the dialogue in earnest and see what we can do to help you solve this very daunting problem.

SENATOR HORSFORD:
Would you also elaborate on the other areas pertaining to the increases in the Net Proceeds of Minerals tax (NPOMT), beyond what is currently projected?

MR. CROWLEY:
There has been a suggestion and a request by many in this body that mining work to identify ways to fill $100 million of the deficit. What we have done is rolled up our sleeves and realized there is a surplus in funding of NPOMT that was not anticipated by the State. That surplus is between $50 million and $60 million. We attribute that to the nature of the business we are in. As you all know, the primary product we produce through mining in this state is gold, and the value of gold has gone up significantly. Since the fourth quarter of 2009, we have seen a very healthy value to gold. As a consequence, tax revenues through the NPOMT, in addition to the conventional business taxes we pay, have risen. This was not anticipated by the Economic Forum or your Fiscal Staff. That is not their fault; there is no blame to be laid at this point. We were able to identify that and highlight the fact that our revenues are coming in in a much bigger way than anticipated. That is one element of filling that $100 million gap.

As I mentioned earlier, mining claim fees could be a solution we would be willing to pay to accommodate another quarter of that ask.

A third way to get to $100 million is to extend the prepayment of the taxes we are currently paying by another three months.

SENATOR HORSFORD:
The key elements are an increase in the NPOMT beyond what is currently projected by the Economic Forum, an increase in the mining claims fee and an extension of the prepayment of taxes. Is that correct?

MR. CROWLEY:
That is right.

SENATOR RAGGIO:
When will we get a firm number on that $50 million to $60 million? When will that occur?

MR. CROWLEY:
It is coincidentally going to be known in a definitive way on Monday. On March 1 of every year, the mining industry makes projections on what their tax revenues will be over the next year. We are submitting those projections on Monday, which is March 1. This year, because we are in a prepayment mode, which we agreed to do during the last Special Session in 2008, that projection will be accompanied by a check. That surplus revenue will be submitted to the State on Monday.

SENATOR RAGGIO:
Based on the information from your group, which represents the major mining companies in Nevada, is that a solid number? Will that money be forthcoming in the normal course of operations without mining or us doing anything else? Is that what you are saying?

MR. CROWLEY:
Yes. We do know with certainty that at least $50 million is coming to the State by polling our larger numbers. That number is without question going to be higher than $50 million because we have not surveyed all of the royalty holders in this State or the smaller operations.

SENATOR RAGGIO:
I wanted to make sure it was understood that is not a change. In his budget, the Governor had proposed taking away 50 percent of the deductions that are used to compute the NPOMT. This has nothing to do with that; this is just normal revenue coming in.

The second segment of your suggestion was increasing the fees for mining claims. We have heard testimony that there are something in excess of 197,000 mining claims going back to time immemorial in Nevada. What is your proposal as to the increase on the filing of mining claims? How much are you plugging in to reach a goal of $100 million?

MR. CROWLEY:
I have not seen final details on this proposal, but I understand it is in the neighborhood of $125 per claim. In response to that request, we have asked that the fee be split over two of our fiscal years, not yours. Almost all of our mines operate on a calendar year. It is anticipated that fee will generate something more than $25 million.

SENATOR RAGGIO:
That assumes everyone who has a mining claim will be willing to pay an increased fee. Is the fee presently $5, or is it more?

MR. CROWLEY:
Currently, the fee is not as simple as it should be. It is split into multiple streams. The federal government has a fee on mine claims, for example.

SENATOR RAGGIO:
No, let us talk about the State fee.

MR. CROWLEY:
I believe the State fee is between $10 and $15.

SENATOR RAGGIO:
How much of a hike is being suggested, over and above that amount?

MR. CROWLEY:
All of the $125 split over two years would go to the General Fund. An important piece of this is for that fee to be assessed temporarily over those two years. We believe there would be an attrition of mine claim holders if you maintain that fee into the future. However, with the price of gold hovering at $1,100 per ounce, people are staking claims right now. As has always been the case, when gold is valuable, people stake claims and hold onto them even if they have to pay an extra $125 per year.

SENATOR RAGGIO:
That would be $125 over and above what is presently being paid?

MR. CROWLEY:
Yes.

SENATOR RAGGIO:
Can you tell us what percentage of these present claims are held by the major mining companies in operation in Nevada, vis-à-vis individual claim owners? Further, is the suggestion that everyone who has a claim, whether one claim or more than one, would be subject to this fee increase?

MR. CROWLEY:
To answer your second question first, the notion that has been presented to us, and we think it is a good one, is that claim owners who hold ten or fewer claims are exempt. I am not sure if that is a detail that will live in the bill, but we recommend that it be preserved. The percentage held by major gold-mining operations is between 40 percent and 50 percent. The rest are mostly held by royalty companies, exploration companies and prospectors.

SENATOR RAGGIO:
I would guess you are probably not in a position where you could estimate how many of these may fall by the wayside because of the increased cost.

MR. CROWLEY:

We do not believe that there will be much attrition in a year's time, given the high value of gold. However, the value of gold will drop as the economy improves. We believe that if the fee were to live on into the future, there would be a significant drop-off of mine claims.

SENATOR RAGGIO:

For the record, has the mining industry presently prepaid for a full year on their NPOMT?

MR. CROWLEY:

That payment will be made for this fiscal year on Monday.

SENATOR RAGGIO:

So the proposal would be to prepay an additional three months. How much would that bring forward at this time?

MR. CROWLEY:

That is between $15 million and $20 million.

SENATOR CARE:

Let me understand how this works. As I understand it, March 1 is the date that this annual payment and revenues get paid. Last time it was prepaid, and now we realize we are entitled to an extra $50 million to $60 million. Is that correct?

MR. CROWLEY:

I think you are referring to the prepayment. What we are suggesting is that a quarter of a year would generate between $15 million and $20 million.

SENATOR CARE:

What is the significance of March 1?

MR. CROWLEY:

We are obligated to pay payment on March 1, regardless of what is happening in this process. That coincidentally is the date on which we make our prepayment.

SENATOR CARE:

Is that the prepayment only?

MR. CROWLEY:

Yes.

SENATOR CARE:

Prepayment aside, what is the anticipated payment for this coming March 1 and for the next 12 months?

MR. CROWLEY:

The NPOMT is split into two streams. We will probably make a payment of around $100 million-plus. Roughly half of that goes to the counties in which the mineral was produced, and the rest will go to the State. For one year, we are looking at north of $100 million.

SENATOR CARE:

You mentioned that as the economy improves, there would be fewer mining claims, which suggests that some of the fervor that is responsible for the price of gold being $1,100 an ounce may not be there 12 months from now. I appreciate that minerals are a commodity and are therefore volatile, subject to all manner of unforeseen circumstances. What is the projection in your industry right now for gold and silver for the next 12 months?

MR. CROWLEY:
I wish I knew the answer to that; I would leverage my house on that prediction. I do not know. I do know, though, that mines are basing their payments for this year on $1,100 an ounce for gold.

SENATOR CARE:
Is that for the next 12 months?

MR. CROWLEY:
Yes.

SENATOR CARE:
How about silver? We have not really talked about that.

MR. CROWLEY:
Silver is increasing in value. It is roughly around $15 to $18 an ounce right now.

SENATOR CARE:
Is that projected for the next 12 months as well?

MR. CROWLEY:
I have not tracked it closely. It has been relatively steady.

SENATOR MCGINNESS:
You mentioned prospectors, which brings to mind the picture of a guy with a burro and a canteen going into the desert. What is the percentage of mining claims that are owned by prospectors?

MR. CROWLEY:
I do not have that data. Today's mining industry, as you know, is a highly sophisticated industry, and the miner pulling a mule is an obsolete notion. There are prospectors out there, but I believe that by eliminating this fee on those who only hold one to ten claims, you are protecting the individual miners you are envisioning.

SENATOR RHOADS:
Every mine that is going on right now and for the last hundred years was discovered by some small prospector. Do you think this fee is going to have a negative impact on finding future gold veins? Going from $25 to $125 is quite a percentage of an increase, and some of these small miners might have 30, 40 or 50 claims. We had 185 at one time, and that fee would have been a big hit.

MR. CROWLEY:
I want to stress that we are not advocating a fee on the mining industry that would have a negative impact on our future. We believe that through a temporary increase in the fee, there is an opportunity for the mining industry to help. However, it is important that it be a temporary increase. Yes, there could be a negative impact on a go-forward basis that could prevent the discovery of future ore bodies. But done for a two-year period, I do not believe you will see that negative impact. It is imperative that we are constantly looking for new ore bodies. As we put the products on which you depend on the market, we have to find new ore bodies to provide for the sustainability of our industry. There are hundreds of exploration companies doing exactly as you suggest: looking for the next big find. Putting a disincentive on their businesses is not in the State's best interest. Doing a fee in a temporary manner is something we are not advocating, but we could live with it.

SENATOR AMODEI:

I do not know if you have this information on the top of your head, but it would be helpful if you could give the Senate a picture of the reserve situation in Nevada, along with an explanation of what they expect to be producing. With regard to exploration budgets, I would like to know whether they are going up or down and how they are funded. Also, it would be helpful if you could give us an indication of those ancillary industries that look towards mining, including their locations in the State, to give a picture of the true economic footprint of the mining industry in the communities. That might be too lengthy for today, but you produced something for the last Session that talked about those issue. It would be a helpful reference in terms of judging the industry and its prospects for the near term, and probably would also be helpful for the election season when evaluating ballot initiatives too.

MR. CROWLEY:

One of mining's greatest challenges is to maintain a sustainable reserve of ore that we can mine throughout the highs and lows of the value of our commodities, whether it is gold, silver, molybdenum, lithium or whatever it is we are mining. In the gold industry, we tend to maintain a reserve of 75 million ounces year to year. You might ask how we do that when we are pulling roughly 6 million ounces out of the ground and putting it onto the market every year. The only way to do that is by investing in exploration and finding roughly 6 million ounces of gold every year. It takes hundreds of millions of dollars in exploration to do that. That investment is being made today. There are major mining operations that are actually borrowing to fulfill that essential piece of our business. Those dollars that are being invested in exploration are being spent on geologists, equipment providers in Las Vegas, laboratories in Sparks and new trucks from retailers in Reno and elsewhere. The supply chain in the mining industry is quite deep. While we employ 14,000 people directly, there are another 50,000 people throughout rural and urban Nevada who are making their living off of the mining industry.

SENATOR HORSFORD:

Please get us that information in writing as soon as you can.

SENATOR NOLAN:

The net proceeds on crude oil are assessed similarly in Nevada as they are on mineral assets, which is unusual compared to other states that extract crude oil do it. Some time ago, a vast amount of crude oil deposits were discovered in central Nevada trapped in sand and shale. There were a number of large companies doing exploration when oil prices were at an all-time high. With the new technology we are hearing about that the oil industry has to extract crude oil from shale, we might see a higher yield of crude oil production down the road in this State. I do not know if you represent any of the oil industry, but while we are crafting some of these different types of opportunities at revenue, I wondered if you knew enough about it to address how you think we should approach that as well.

SENATOR HORSFORD:

Please answer briefly, since this is not helping us with our budget crisis.

MR. CROWLEY:

I can answer the question in four sentences. The NPOMT is a property tax. It exists to find the fair market value of an area of land that is speculative. It has some kind of value under the surface, whether oil, gold, molybdenum or geothermal, but you do not know what that value is until you have pulled it out, processed it, taken it to market and taken out operating expenses. It applies to oil just as it does to gold.

SENATOR HORSFORD:

I appreciate the mining industry working with Legislators to help us balance this budget. It shows tremendous corporate citizenship that you are willing to find ways to address the budget crisis. We do not agree with all the elements you propose; you know my concerns about prepayment, and Senator Raggio shares those concerns. However, the fact that you are willing to continue to stay at the table and find ways to share in the responsibility speaks volumes about the mining industry in Nevada. Thank you.

WILLIAM VASSILIADIS (Nevada Resort Association):

Thank you for the opportunity to be here today and offer some thoughts on behalf of the gaming industry. The question from the Majority Leader was why this year we feel we can or cannot contribute to solving the severe crisis the State is going through. Let me say first off that we have a complete understanding of the crisis the State is going through because we have been going through the same crisis. For better or worse, the fortunes of the gaming industry and the State are inextricably linked. As the economy damaged the industry, it also damaged the State. We are now into the third year of an economic downturn that has significantly and dramatically affected the industry.

We appreciate very much the pain you all are going through. We know why you came to this House, and the things you are doing now are not the reason. We have watched Senator Raggio and many of the Senators here build some wonderful programs that they now have to look at with a different eye and maybe dismantle. We are not without sensitivity. However, we need to make several points.

This is uncomfortable for me. This is the first time in many years that I am here to say that the gaming industry cannot be at the table. Probably no one cares but me, but the first Session I was here, the Gross Gaming Tax was raised. That was my baptism into the Legislature. The gaming industry has had industry-specific taxes and has paid almost $1.2 billion in new taxes since 2004, with $240 million increase in taxes. Last Session, despite the fact that we were going through devastating economic times, this Legislature, working with the industry, raised the room tax by 3 percent. If you look at the price resistance of the market during this recession, you know well that it is not a pass-on cost. Last year, the industry suffered a loss of $6.7 billion. Casino revenues tumbled. We laid off nearly 35,000 people.

You have asked us this year to step forward. Despite the news coverage and the years of the punditry talking about Gaming Inc., the decision is yours to make. We understand that. You asked our opinion, and we are not here to say no. We are here to provide information to let you know how damaging and how difficult new fees would be on the industry right now. A $32.5 million fee, one of the proposals that has been floated, could be equivalent to 1,000 jobs on top of the 35,000 we have already laid off. We pledge to you that as times get better—and hopefully it will be soon, since we are seeing a little bit of improvement in the economy—we will support this Legislature, as we have every time before, in its efforts to improve services and help the neediest Nevadans.

You asked for new ideas. You and Senator Raggio have hired experts to study our structure and come up with specific recommendations. You have a citizens committee studying what Nevadans want and need in the future. We support both of those efforts strongly. We look forward to working with everyone in this Legislature and our sister industries next Session to hopefully, finally, accomplish the goal that has eluded me in my career so far: a truly stable and broad revenue structure. We would encourage the Legislature to also look at some significant and serious government reforms. As we figure out how to better raise money, we should also figure out how to better spend money. But that is not for me to do.

On behalf of the industry, we will be here in 2011, and we will help in any way we can. I am sorry to say, however, that for the first time, this year we just cannot help.

SENATOR HORSFORD:

I appreciate the fact that the gaming industry contributes. Well over 50 percent of the taxes that are paid to the General Fund come from gaming, in the form of Gross Gaming Taxes, sales taxes and a portion of the property tax that goes to the State. There has been a strong partnership between gaming and the State that has helped to prosper the industry, the State and all the people in it.

The General Fund, in this biennium, will subsidize the Gaming Control Board and the Nevada Gaming Commission with more than $62 million. That is the equivalent of 800 teachers, or of another 4-percent cut. Some companies in the gaming industry are experiencing dramatic impacts due to the prolonged economic recession. However, the question is why should the taxpayers of Nevada have to subsidize the industry in the amount of $62 million at a time when we are choosing between schools, public safety and health and human services that are required by the Constitution?

MR. VASSILIADIS:

First, the industry already pays about 50 percent of the General Fund. Much of the Gaming Control Board budget is paid for by our current taxes. Second, it is interesting that you brought up the 800 teachers. That is roughly the number of employees who could lose their jobs with additional burden on the industry. While I have all the respect in the world for our teachers and State employees, we believe it is just as bad for a culinary worker, a dealer or a valet parker to lose their job as for a teacher. We do not want anybody to lose their job, but that is the real impact.

Lastly, one of the positive faces Nevada has been able to show to the world is the distance and separation between regulators and licensees. There is an integrity to this relationship that no other state has had. In fact, in the National Gambling Impact Study, the regulatory environment here was held up as a model. The President of the United States, when asked about gaming in his own state, said that Illinois should follow Nevada's model of regulating its industries. When there were efforts to ban sports betting, it was the integrity of that regulatory process and its distance from the industry that we were able to bring to Congress that made it possible to block those efforts. To us, a process whereby we would sit with our regulators and arm-wrestle and debate their budget and come before the Legislative Commission as the arbiter would have a horrible national perception. It would begin to breach what has been a distance between regulators and licensees that is critical to maintaining the integrity, and the perception of integrity, of this regulatory process and our industry.

SENATOR HORSFORD:

I fully respect the separation between the industry and the regulatory body. However, just last Session, this Legislature and the Governor made the policy decision to make the body regulating the insurance industry completely fee-supported. It no longer receives any General Fund support. If it is the appropriate decision for the insurance industry, what is the difference with the gaming industry? If it is not the right decision to have the gaming industry support the Gaming Control Board through fees, are there other parts of State government that gaming can help preserve as we work to restore proposed budget cuts in the amount of $880 million?

MR. VASSILIADIS:

I would refer back to my opening comments about the financial state of the industry. Last year, in the middle of an economic crisis, the industry signed up for $300 million in new taxes to go to education, as well as the increase in the Modified Business Tax (MBT). One thing I fear is that the impression will be left that the industry is not doing its fair share during these tough times. We have been doing more than our fair share. It might be a dwindling budget, but we are still paying 50 percent of it. The industry has come to the table every time this Legislature has asked. These are unprecedented economic times. The fact that we are troubled by $32.5 million in fees, or whatever number the Legislature deems appropriate this year, should in no way reflect on how much impact the industry is already having on the budget crisis. We will be here when things are better and there is a long-term plan in place.

SENATOR CARE:

I have some familiarity with the issue of fees and taxes on the gaming industry. As I understand it, an applicant for a gaming license pays for the costs of the background investigation, no matter what the cost. What other fees or costs does an applicant or licensee have to pay as part of the current regulatory scheme?

MR. VASSILIADIS:

We currently pay investigative fees and some audit fees. There are other fees and costs I am not completely certain on at the moment.

SENATOR AMODEI:

Could you give us a forecast on what you see the next 12 and 24 months holding for your industry, in terms of recovery? I know you have had new properties come on.

MR. VASSILIADIS:

Being Greek, I drink Turkish coffee. Old Greek ladies turn the cup upside down and let it pour down, then read the inside of the cup to see what the future is going to be. I think I would feel more comfortable doing that than predicting this economy.

We are seeing some signs of improvement. Air travel has been up two of the last three months, and driving traffic has been up. It was a myth that we were recession-proof, but we could manage our way through a recession decently. However, the nature of this downturn is unprecedented. Tourism is dependent on everybody else's health, and the airline, construction and many other industries are in financial difficulty. We are seeing increased convention bookings from the Las Vegas Convention Visitors Authority. We are seeing some further outbookings. We believe ARIA CityCenter is giving us a bump right now. At the same time, I watch CNN and Fox like the rest of you do, and they talk about another bump and another recession. I wish I knew what all that meant.

We believe we are seeing the first signs of recovery, but it is not going to be the kind of spring-back Nevada has become accustomed to. We all believe the worst is behind us, but we think the curve up is going to be very slow. What I worry about most is our smaller properties, particularly in the rural areas. As pricing continues to be deflated in the urban areas, whether it is in Nevada or out of it, that greatly affects places like Wendover, Laughlin, Mesquite, Yerington and so on.

SENATOR CEGAVSKE:

How many small casinos have filed bankruptcy in the last year or two? I know it is increasing. How many are still in operation?

MR. VASSILIADIS:

I do not know, but I will get you that number. Mr. Neilander testified yesterday that about 90 percent of their time now is being spent on financially troubled properties. That gives you an indication of how broad the devastation is.

SENATOR HORSFORD:

How many employees does the industry employ state-wide?

MR. VASSILIADIS:

I do not know that number off the top of my head. I will get it to you.

SENATOR HORSFORD:

A good percentage of them rely on the three primary services the State provides: education, health and human services and public safety. Based on the level of cuts that are being proposed, I would like to know what the impact is going to be on them of those cuts. While the gaming industry says it is unable to offer suggestions on how it can contribute now, what is the impact on your employee base if schools, healthcare and public safety are compromised? Also, what impact will those cuts have on the tourism industry and on the industry's ability to recover?

MR. VASSILIADIS:

As I said to Senator Amodei, our health is dependent on the health of the sectors around us. Any further erosion in employment will have an impact on the gaming industry. But I would respectfully submit that the erosion of employees in our own industry would also have an impact. Of course, we are interested about public schools, and we hope there will be a consensus in this Legislature to lessen the impact on schools as much as possible. We are also concerned about public safety. Right now, $32 million is a tough pill for the industry to swallow. I do not see how that amount is going to dramatically resolve a shortfall of $880 million.

Again, I pledge to you, and we have never broken our word to you or this body, that we will be here next Session at your direction, doing what we can to come out of this crisis and prevent this crisis from happening again. As long as I have been here, there have been studies, paid for by this body and the Assembly, going back to the 1980s saying that if we continued to rely on tourism and sales, something bad would happen. Well, something bad has happened. Yet, in the middle of the something bad, we continue to go back to the industry whose economic downturn has caused the State's economic downturn. We will stand with you to hopefully never put a future Legislature into this situation.

VERONICA METER (Las Vegas Chamber of Commerce):
We represent 200,000 Nevadans; these are people with jobs in our state. Those jobs fund their families and their house payments and put food on the table. These folks are not just our employees. They are also your constituents. We want to keep them employed, and I know we share that same goal. We understand how important services are to our community and to our State. For this reason, we worked with you last Session and agreed to significant tax increases. We almost doubled the MBT, a payroll tax that is paid by every employer in the State. We know 2011 will be challenging as well, and we pledge that it is our intention to help the State find comprehensive solutions to our problems. However, at this time, today, right now, it is not the time to place additional burdens on our businesses.

I do not think we need to explain to you how close our businesses are to the very edge. I will share just one example with you. A business owner with 150 employees recently had to let 5 of his managers go in order to preserve the workers dealing directly with customers. He also had to mortgage his home and take out a $100,000 line of credit in order to pay his payroll. What do we tell this person? How much more can he give?

Earlier today, you posed a question to the business community, asking what they can do. Our businesses do not think they can do any more than they have already done in the last few months. I would like to echo some comments made by Mr. Vassiliadis dealing with the tax study. That is a good process and a positive way of looking at some options.

Your actions today are critical to our economic recovery. One of the main ways to reach economic recovery would be to provide and keep providing private sector jobs.

TRAY ABNEY (Reno Sparks Chamber of Commerce):
None of us envy the position you are in this week as our State deals with this unprecedented shortfall.

You need to know that if Chamber of Commerce members hurt, the public sector hurts. If Chamber members cease to exist, government ceases to exist. We believe that having a job is the ultimate quality of life. Everyone who walks into this building should be striving to make it as easy as possible to employ people in this State. That does not mean maintaining Nevada's position as the third or fourth in the nation with the number of health insurance mandates we have placed health insurance policies in our State. It does not mean bringing forth bills every Session to increase workers' compensation costs. It does not mean bringing forth bills that make it harder for our members to collect debt that is owed to them.

My message is the same as it was in the 2009 Session. We believe that before we talk about any kind of tax increase, we need fundamental, long-term spending reform. I would urge all of you to read Frank Partlow's book, *SAGE Nevada: Bipartisan Directions for Nevada's Future*. It is a quick, one-hour read. General Partlow was the executive director of the SAGE Commission, which found a potential $2 billion in savings for the State over the next 5 years. We think that needs a serious effort. We need to look at NRS 288 and the shackles that have been placed on local governments when trying to hire and manage employees. We believe every dollar of new taxes, every regulation, every new fee is one more job that cannot be had in the private sector.

This is a chance to fundamentally restart the clock and remake our State. I heard someone refer to it the other day as taking an Etch-a-Sketch and shaking it clean. Once revenue starts coming back, we need to start talking about instituting some type of spending cap and a Rainy Day Fund. Once that Rainy Day Fund is healthy, we can then determine what our number one priorities are. We can talk about K-12 education once the Rainy Day Fund is healthy and not recreate some of these programs we have added over the years.

This chamber of commerce does not believe in a "no new taxes" approach. I testified in favor of the tax study bill in the 2009 Session. I testified in favor of the Majority Leader's bill to implement a SAGE Commission study on education last Session, and we support those efforts.

SENATOR TOWNSEND:

There have been two individuals who represent a significant portion of the economy testify in front of us today. I am not sure what the first one meant about being at the table. Based on the numbers I saw, I do not know what that means, but I am sure we will clarify that. The second one was quite articulate on the situation his industry faces.

I am not as concerned about how we will get out of here in the next few days. It is going to be painful, but I believe the will is here, and I believe the relationships between the Legislators are strong enough to withstand all the pain we will have to go through. It is next February towards which we should work.

Two individuals have stated they will be at the table because we are looking at a substantial deficit next time. We are all familiar with the reasons, and I will not bore you with it at this time. Many of us will not be here. On behalf of your organizations, will you go on record in public that you will be at the table to help solve this problem, not just from the revenue side but from the expense side as well, to help those of my colleagues who will return to solve this problem?

"No" is not a plan. Taxing the world is not a plan. Plans are made by reasonable and rational people who all have a stake, who will sit down at the table and find common ground. If you are going to wait to come up here in February and then dilly-dally around with my colleagues and choose up sides, that is not fixing the long-term problem.

There are a couple of us who have been here for a lot of years, longer than you have been alive. This is a challenge of gigantic proportions. You represent the second largest group in the State: taxpayers and holders of investments and real estate. If you are not at the table on both sides, you are not going to allow those people, who not only use the services but pay the taxes, to have an input into the process. This is not about showing up here with a blue badge. It is about taking a deep breath and getting back to work the day we finish here. If you are not willing to commit to that, your time here today has wasted all of ours. We missed lunch for you guys anyway.

Are you getting the message here? You are absolutely wasting our time. The day we end, take a deep breath, say hello to your families, and get back to work on this problem. We are ducking a problem that the next session faces. We have $500 million in liabilities we have not even talked about relative to this $880 million deficit. It is not going away while we are here.

All of those you represent have kids in school, many of them are teachers, some of us work for us at the State or the counties. You have to be at the table now. You have to be open-minded. You have to be respectful. You have to bring creative ideas. When someone says something that is anathema to your organization, you have to learn to suck it up and listen. That goes for every organization out here. This group, headed by this Majority Leader, cannot do this alone next time. It requires those who have already spoken and you two and your organizations to do all the research to help solve these challenges.

I would give you a day off, maybe two, to see your kids. But you have to come to the table on both sides of the equation, and you have to start it right away. If you are unwilling to do that, the people you represent have lost out on a great asset. I would ask you to go on the record that you are going to start with this process on both sides of the equation, and you are going to start it right away. I would go into the hallway and talk to every one of your colleagues, and I would start as soon as we are done. If you do not, the burden you are going to place on this Majority Leader and this Minority Leader when they come back next time is going to be excruciating.

I am not running for anything. There is nothing in this for me. But I live here, I love it here, and I have watched this process for 30 years. I do not want to see it unravel because people want to choose sides. This is not about sides. It is not about partisanship. That is for the campaigns, and that is the way it used to be when I got here. When the campaign was over, you walked through that door and you fixed the problem. Now is the time to do that again. I hope you will go on record and say you will do that.

MS. METER:

I absolutely agree with you. This is not about just these couple of days we are here. It is about keeping an eye on the future and on the next Session. This body knows from the last Session that we worked with you, side by side, on helping find solutions, even when businesses were struggling and people were being laid off. We were right there with you trying to ways to shorten the budget shortfall. At the Las Vegas Chamber of Commerce, we have a government affairs committee that is committed to the State. This is our home. I have been in Las Vegas for 15 years, and my family is here. Like you, I want to make sure our State does well in the future. We have commissioned many studies to help not only Legislators, but also other interested parties, to really understand the facts behind the work we are doing and the public service we provide because we care about our community.

We will be, as we were in the last Session, continuing to work on our State and its future. It cannot just be a conversation about revenue. We need to talk about reform. We made progress last Session, with the help of all of you. We need to continue that. We have to look at it holistically, not just one or the other.

We will be here again next Session, helping you in your immense responsibility of putting the State back on a sustainable track to the future.

MR. ABNEY:

I could not agree with you more, Senator Townsend. The Reno Sparks Chamber of Commerce will sit at any table we are invited to. What I would like to see at the center of that table is General Partlow's book outlining the SAGE Commission's recommendations for $2 billion in savings. I would like to see *The Agenda for Economic Vitality*, which is our policy manual and lists what the business community in Northern Nevada stands for and believes.

We do work on this. Starting next month, after filing ends, we are going to ask every candidate for election and reelection their thoughts on those two documents. We are going to be at the table. The future of this State is very important to my members, and it is certainly very important to me. I will not be able to join this body this weekend, since my wife is due to have our first child hopefully tomorrow. He will be the first member of my family to be born in Nevada, and I am excited about that. I care deeply about the future of this State, and I will be working hard on behalf of my members.

SENATOR CARE:

Every day, I pick up the paper and read where a candidate for office is asked, "What is the first thing you are going to do if elected?" The candidate always says, "We need to diversify the economy." I say to myself, "How are you going to do that?" It would seem to me that the quickest way to do that, although it may not be simple, is for other companies to relocate here or expand here. I know there are companies that would like to do that. I am with a law firm, and we get calls all the time from companies in California that feel strangled by regulations and taxes and are looking to go someplace else. They look at Nevada, Arizona, Washington and elsewhere.

If I were one of those company executives, I would know about the tax-friendly environment in Nevada, but I would also want to know about the quality of public education and higher education. Not all of the companies that look at Nevada come to Nevada. You may not keep any statistics, but can you tell us generally the reasons given by companies that decide not to relocate here? What reservations do they have about the quality of public education in this State?

MS. METER:

I can only provide anecdotal information. I would be happy to see if I can provide additional information, but I do not have numbers with me today. I do not know if we track that specifically, but I will make some calls and see if we can bring that back to this body. I agree wholeheartedly that we need to diversify the economy. We need to do more work on economic development. We cannot exist as a state on a single industry. We need to look at other alternatives coming into our state, not only retaining the companies we do have but bringing other business here as well.

SENATOR LEE:

After hearing some of the back and forth, I was not going to say much because I am a living example of what your people are going through. The first wave of people who lost their businesses were the guys who worked on their credit cards, small guys trying to make a career get going, paying their credit card at the end of the month and borrowing from the credit cards, and then they were gone. Then, you would have lines of credit so you could make your payroll. Pretty soon, the banker came to you and said, "We want an abundance of capital—oh, you do not have enough? Then we are going to term out your line of credit. You are gone." Basically, the banks wiped out the next level.

I have always wondered why, as powerful as your organization is in the state, it does not command more of the respect of the larger banking industry. I am not in charge of anything important, but I know if I had ten friends and the banks were wiping us all out of business, I might get together with them and say, "You know, maybe we ought to boycott those banks." What is happening right now in Nevada is all the credit unions are being taken over by people in other states. We have one or two credit unions left that belong to the people who live here, and they are just barely hanging on.

My concern is when you are having these meetings, you are sitting talking about how times are tough, what do we do, we have to stimulate the economy. Then you go deal with an industry that is doing everything it can to protect itself and nothing for Nevada. Why do you not get together and tell those banks that you are going to ask people not to put money in their bank anymore? They have shown that they do not care about our businesses, our business owners or the families here.

I think the time of the chamber working to move forward is probably about as forward as we are going to get. It is now time for the chamber to start attacking things that are dismantling business in this state. When you go back to your organization, ask them why are we putting up with these people decimating business. Bring these bankers in and say, "If you are not going to work with our businesses, we are going to find banks that will." Tell your businesses about the banks that care about Nevada and are working with businesses to pull this economy out.

I believe the chamber of commerce is powerful enough to start righting this ship and demanding some accountability from the banking institutions. Without you pushing this, business is not going to be able to recover half as fast. I would ask the chamber, instead of being always defensive about taxes, to be more proactive about protecting business. That is just my take how we're going to get us out of this economy.

SENATOR TOWNSEND:

My colleague from southern Nevada asked a cogent question about economic development, and it requires a response.

First, we as a state, and that includes pressure from the individuals at this table and those at the back of the room, have to decide what kind of economic development we want. We have economic development, but right now it is just anybody who shows up. No, no. You have to focus. You have to decide who you want here, because they are going to be part of the community. This is what my business does. We buy businesses every time we can. What do we want? Who do we want living next door to us? Who do we want in the office park next to us? We want someone who pays high wages, provides health care, is a low water user, is a non-polluter and gives something back to the community. That is what we are looking for. If you cannot provide that, we are not interested in buying your business at any price. We do not want you here.

The answer to your question is very simple. All the research shows that it is not about our tax structure. It is about two things only: a vast commitment financially to higher education, and an equal commitment to getting rid of onerous regulation. That term "onerous" is defined by many people. It means bringing people together. It does not mean coming here with a book, saying read this and do that. Dead wrong. It means sitting down with labor and management and going through the list of thousands of regulations that you might think impact economic development, finding resolution and coming here with a solution. That is what it means. That is what I am asking from you.

Do not put preconceived conditions on a meeting with people to solve problems. You will have absolutely no success. You are not old enough to remember how long it took to get to the design of the table for the Paris Peace Talks in 1973. We argued about the shape of the table. You are putting something in front of us and saying, "These are the conditions." There are no conditions. You are Nevadans, and every one of the people you hang out with in the back of the room who represent all kinds of different groups have got to understand that. There are no conditions from either side. No conditions. Sit down and analyze the issue. If there are regulations that both can agree do not belong here, get rid of them. Get rid of the laws. That is what you have to do. Those are the conditions. If you come with a one-size-fits-all, our-way-or-the-highway mindset, you will accomplish nothing.

You have to re-gear how you are going to think. You have six months to help us do this problem. I do not have to say anything about the Minority Leader. Sixty-plus years in public service is enough. The Majority Leader is a young man starting out who has a great future in this political world. They are trying to represent multiple groups in this State. Are you going to let them down? I am not going to. If you come here with an attitude that either we use your ideas or you are not going to talk to the other side, you will accomplish nothing, and you will never be able to answer the question the Senator from Clark County asked. He asked a good question, and that is the right answer to it.

SENATOR HORSFORD:

This kind of open, honest discussion is well overdue in the State of Nevada. We have had these conversations about our economic development strategy. Nevada taxpayers provide across-the-board incentives for economic development policies towards the goal of diversifying the economy. That has been the premise of it. The question I would have, not just the chambers but for other groups as well, is why should Nevada taxpayers continue to allow the level of across-the-board incentives without the strategic focus Senator Townsend talked about? I have seen estimates of $150 million or more in tax incentives through abatements. Where is the return on that investment? Where are the new industries? Where are the new companies? How many people are being employed? Why should that investment be preserved?

MR. ABNEY:

I could not agree more. The Economic Development Authority of Western Nevada in Washoe County focuses on six areas, including green energy and light manufacturing. Anything we can do to laser in, to pinpoint specific industries and what those specific industries need to do to move here and thrive, we should do. It is certainly not the position of the Reno Sparks Chamber of Commerce that the way we are doing economic development now is the right way to do it. I would agree with the comments Senator Townsend made about what businesses are looking for when they come here. In April 2009, I attended a hearing in Reno in which California legislators met with companies who moved to Nevada from California to find out why they had moved. While taxes were mentioned, the regulatory structure in California was the biggest reason that came up. We would be fully supportive of diversifying our economy. It is important not to have such a large part of our state budget depend on one or two industries.

SENATOR HORSFORD:

We will hear next from the Nevada Manufacturers Association and the Nevada Retail Association. Again, I am particularly interested in answers to the questions I posed earlier: why should taxpayers continue to subsidize some of the regulatory programs that are there for your business purposes, and what solutions there are for your industries to help us address this budget shortfall.

RAY BACON (Nevada Manufacturers Association):

Let me start off with a little bit of historical data. The manufacturing sector in Nevada is only about 3 percent of employment, and a reasonable number of people do not really understand the manufacturing sector at all because we tend to be fairly quiet. We fill our plants and make our stuff, and the vast majority of it is shipped out of state.

The numbers go like this. The manufacturing sector in this country started into recession from an employment standpoint in roughly 1978. At that stage of the game, we were roughly 20 percent of the national employment. Today, we are down to 12.7 percent of national employment and still dropping. In this current recession, job losses are in the neighborhood of 8 million jobs, of which 2 million come from the manufacturing sector. We are roughly 25 percent of the job losses, even though we are only 12 percent of employment. Of those 2 million lost jobs, roughly a third will be lost to productivity. That is a good thing and a bad thing. It is a good thing that we are becoming more productive, and we remain the most productive work force in the world. It is a bad thing that those jobs will never come back. Another third of those are jobs that are moving offshore because of regulatory constraints in this country. The last third of those jobs may come back, but at this stage of the game, no one can say when they will come back.

Since the days of Governor Bryan when we started the Economic Development Department, Nevada has targeted manufacturing jobs as the wave of the future. As we are now down to 12.7 percent of the jobs and still dropping, we may have the wrong target. There will be some new manufacturing jobs; we still remain in the neighborhood of 18 percent of global manufacturing output in the world. That is down from 20 percent in the late 1970s.

For years, I have said that it is easy for Nevada to look good when you live next door to California. They have a tendency to create regulations that chase businesses out of the state. Senator Lee raised the issue of financing. Financing is one of the main reasons companies cannot leave California. I would like to say it is the fault of our local banks, but it is not. It is the fault of bank policy and the changes that have taken place in this whole recession across the board. I cannot go down to my local Bank of America or Wells Fargo, grab the bank president and say, "You are the problem." The problem is much bigger and much higher than that, and money, like all other commodities, has a tendency to flow across property lines relatively rapidly. We do not, as much as we would like to, control the financial industry in Nevada.

There is a tax increase the State has not addressed that is going to impact every employer in Nevada. Our unemployment insurance problem is about ready to become a huge tax hit on the vast majority of employers. As of last fall, roughly 52 percent of the employers in Nevada were paying at the lowest possible rate, which was about 0.25 percent of their payroll. That was because people who became unemployed were routinely employed again after taking only a week or two of unemployment payments, if any, due to the growth we had in Nevada for 25 years. Every one of us in this room has heard tales of people losing their job and having a new job the next day or even the same day. Now, of course, our unemployment fund is depleted, as you are all aware. I get mixed numbers because people do not really want to talk about big it is going to be, but that 52 percent of employers will probably get an increase in unemployment insurance in the range of 10 times what they were paying before. Some will see bigger numbers than that.

That is just based on the experience factor. That does not touch the issue of the loan we will start paying back, I assume out of the General Fund, although there are things going on in Congress. I do not think we know where that is going to take place.

The Nevada-specific numbers go like this. We had a base of about 45,000 manufacturing jobs in this state. We have lost 4,400 of those jobs during this recession. Part of the reason the manufacturing jobs are gone is that several factories in this state directly supplied construction-related materials. Some of those plants are now closed. We have several plants in this state that supply items for the gaming industry. None of those businesses are closed to my knowledge, but many of them and their suppliers are down substantially. That gives you the general lay of the land. We do not work on the economic development and recruiting folks. We look at who is here now. We have never tried to compete with the economic development people, and we do not intend to in the future.

As I have said for years, Nevada has had cycles of ups and down for its entire history. You cannot have a prosperous and viable public sector unless you have a prosperous and viable private sector. If you look at the past, you will find many once-thriving communities that are now ghost towns. All you have to do is drive around Nevada in Senator McGinniss's district, Senator Rhoads's district and even in Senator Amodei's district, and you will find ghost towns. They got there mostly because of the failure of the private sector. I am not saying we are on that path, but some of our communities may be on that path.

MARY LAU (President, Retail Association of Nevada):

Thank you for giving me the opportunity to testify and walk you through how dire the economic reality is in Nevada's retail industry. I will be speaking to you regarding retail employment, income, tourism, commercial real estate and sales in Nevada and its effect on sales-tax revenue.

Employment: During the past 12 months, many of Nevada's key economic indicators have continued to show signs of weakness. The unemployment rate has risen from 8.4 percent in December 2008 to 13 percent in December 2009. This translates into a 6.4-percent decrease in the State's total job count and 176,000 individuals actively searching for work today, compared to 121,300 one year ago. Final unemployment insurance payments made during December 2009 totaled 8,421, an increase of 51.1 percent compared to the 5,574 payments made in December 2008.

Since peaking in December 2007 at 147,400 positions, retail jobs in Nevada have declined steadily, totaling only 129,500 as of October 2009. The loss of 17,900 positions represents a 12.1-percent decline in retail employment. Over the same timeframe, total employment in Nevada declined by 5.8 percent, or 74,700 positions. Stated otherwise, Nevada retailers account for roughly 11 percent of the State's employment but nearly 25 percent of its displaced workforce.

Comparing October 2009 to October 2008, the latest figures indicate there has been a loss of 8,400 retail positions, or a decline of 6.1 percent year over year. Since October 2008, job losses in the retail sector have been approximately proportionate to positions lost in the broader state economy, with a retail position representing 1 of every 9 jobs lost (10.8 percent). Total employment in Nevada declined by 6 percent over the same period. I would remind you that these are not Retail Association of Nevada numbers; they are numbers contracted through Applied Analysis and Jeremy Aguero.

Income: Declines in statewide personal income are equally discouraging. Nevadans have cumulatively lost $25.4 billion in income since the start of the recession two years ago, or $9,800 per capita if allocating that loss over the State's 2.6 million residents. During the past year, assuming Nevadans would otherwise have maintained an income level equal to that attained in December 2008, the State has cumulatively lost $9.6 billion in income, or $3,700 per capita.

Since the beginning of the recession in late 2007, earnings for Nevada employees in the private sector have fallen from $68.5 billion to $59.1 billion per year, a decline of 13.7 percent. During the same period, the earnings for state and local government employees have increased from $8.9 billion to $9.5 billion per year, a growth rate of 7.6 percent. These numbers are not from Mr. Aguero; they are from the U.S. Bureau of Economic Analysis.

Tourism: Most recently, tourism statistics on a year-over-year basis are up modestly, though they remain well below pre-recession levels. Visitor volume trailing 12-month totals are down 1.5 million compared to the prior year and 2.9 million compared to the 12 months ending December 2007. The latest increase is attributable, at least in part, to improving consumer confidence, which has risen 15 points (38.9 percent) over the past year, but still remains 37 points (40.8 percent) below where it stood when the recession officially began in December 2007.

I have provided a reference guide that provides further insights into a variety of economic indicators over both the past year as compared to two years ago, December 2007, the start of the recession.

Commercial Real Estate: Decreasing commercial market lease rates, record vacancy rates and resulting delinquencies and foreclosures faced by landlords have been referred to collectively as "the other shoe to drop" in the current economic recession. Vacancy rates in anchored retail centers in Las Vegas Valley, which excludes strip malls without anchors, reached a record 9.8 percent in the second quarter of 2009, nearly three times the historical average, with 5 million square feet available in a total market of 51.3 million. The average asking rate for retail space dropped to $2.06 per square foot per month, a level not seen since 2006.

In the Reno-Sparks area, the retail vacancy rate was even higher, at 15.6 percent with nearly 2 million square feet available in a total market space of 12.7 million square feet, while asking rates hovered around $2 per square foot, according to NAI Alliance in Reno, which tracks retail shopping centers of 20,000 square feet or more. Regional malls are excluded from figures reported for both Las Vegas and Reno-Sparks. It is worth noting that asking rates are not necessarily reflective of effective rates on existing leases.

Nevada Sales and Sales Tax Revenue: One month ago, we reported that national retail sales were up 5.4 percent in December 1009 on a year-over-year basis. It appeared economists and retail associations nationwide had accurately predicted a more favorable holiday season for 2009 as compared to the previous year. The results are now in for Nevada, and retailers here bucked the positive national trend.

Statewide, December retail sales declined 6.6 percent in 2009 as compared to the same month in the prior year. Many had predicted a gain of 1 to 2 percent compared to the prior year, based on rising consumer confidence levels and an up-tick in national holiday spending polls. Among traditional holiday gift-type retailers operating in Nevada, most did not witness such an increase. One sector, clothing and clothing accessories stores, did perform well statewide, increasing 4.2 percent in December 2009 compared to December 2008. However, most sectors reported a decline this year compared to last year's already depressed figures, including sporting goods, hobby, book and music stores (-7.4 percent); electronics and appliance stores (-4.6 percent); furniture and home furnishings stores (-3.1 percent); non-store retailers (-2.4 percent); general merchandise stores (-0.7 percent); and motor vehicle and parts dealers (-0.4 percent).

The year 2009 offered historically attractive bargains for the consumer—and weakened or negative margins for the retailer—and this trend is expected to continue into 2010. The sales figures show without a doubt that Nevada's second-highest in the nation unemployment rate continues to play a significant role in retail sales and, correspondingly, the sales tax revenue the State collects. It is difficult for consumers to feel optimistic about making purchases, even at significant discounts, when they are under the financial pressures they are facing.

A survey completed last week for the Retail Association in Nevada showed that 87 percent of respondents indicated they or someone they knew had lost a job, taken a cut in pay or lost a house.

Across Nevada, there was significant disparity between counties in terms of December performance. I have provided a chart depicting how Nevada counties with lower unemployment rates were more likely to witness a positive change in monthly taxable sales for December 2009, as compared to December 2008.

Senator Care, you asked earlier about people coming into this state. Yesterday, at a meeting of the Nevada Commission on Economic Development (NCED) with the division stakeholders, a handout indicated the factors in relocation. In 2009, the top ten factors from a corporate survey in *Area Development* magazine were labor costs, highway accessibility, tax exemptions, energy availability and cost, corporate tax rate, availability of skilled labor, occupancy or construction cost, state and local incentives, availability of advanced information communication technology services, inbound-outbound shipping costs, low union profile, available land, available buildings, right-to-work state, proximity to major markets, expedited permitting, environmental regulations and availability of long-term financing.

SENATOR CARE:
Was that a national survey or a state survey?

MS. LAU:
That was the NCED's information they gave out.

SENATOR CARE:
Was there any discussion of the quality of education?

MS. LAU:
The availability of skilled labor, which was number 6 on the list, might translate into that.

SENATOR TOWNSEND:
I will ask you the same question I asked of the previous group. Are you willing to commit to us here that you will start a day or so after the Session to help us, sit down without preconditions, sit down with all of the interest groups, to solve the revenue and the expense side

of the challenges we face? We particularly need to use that document in front of you of all the things people are looking to help us diversify the economy.

MS. LAU:
Absolutely, and I will even do you one better. We will continue to employ Applied Analysis. We will continue to send economic bulletins throughout the year. We will continue with all of our polling, and we will continue to work with the State.

MR. BACON:
As you well know, NMA has been involved in the education issues in particular for 20 years now. The level of dissatisfaction among my members is substantial in that area, to some degree in higher education, but particularly in K-12. I know there will be some people who will object to this, but if you look at the requirements to stay in business in the manufacturing sector, if you do not gain in productivity, you are gone. If you take a look at the productivity gains in the education sector, there are monumental opportunities for improvement if we take an open-book approach and see what can work to improve not only the productivity but the quality of education in Nevada. We have been involved in that.

From a secondary standpoint, one of the things we have been working on is the potential of filling in some of that vacant warehouse space Ms. Lau mentioned with logistics sector industries. We would love to have people who would come here who would all demand high wages and bring in high skills and high-paid jobs. But the reality is logistics jobs have gotten progressively closer because technology has hit the logistics sector. We believe that we can make logistics almost energy-free because there are a lot of warehousing spaces where you could put solar panels on the roofs. The last thing I knew, turtles cannot get to the roof to damage the panels. There is an opportunity to build the logistics business in Nevada, and the industry is anxious to leave California because of their recent anti-global warming measure, California's A.B. 32. That would bring in a substantial new portion of property tax, building tax and everything else.

Across the board, we have always been engaged, we fully expect to stay engaged and we think there are some huge opportunities.

SENATOR SCHNEIDER:
Do retailers pay a corporate tax in Nevada?

MS. LAU:
There is no corporate tax in Nevada, no.

SENATOR SCHNEIDER:
There is no inventory tax.

MS. LAU:
No.

SENATOR SCHNEIDER:
Our taxes are better. Are the business environments better in California?

MS. LAU:
I think all states are suffering. The various tax structures are being put to the test in many other states. The infrastructure is different in other states than it is here. There are changes and subtle differences between operating environments and tax environments in the other states.

SENATOR SCHNEIDER:
Our property taxes are lower than in California. Our workers' compensation is lower and more desirable to business than in California.

MS. LAU:

I would assume so. I do not know their rates.

SENATOR SCHNEIDER:

I go to California occasionally, and my wife likes me to cook her dinner when we go down there. On Wednesdays, I get mailers from Albertson's, Vons, Smith's Food King and Walgreens. I go through those mailers and pull out Albertson's and Vons specifically because they have an Albertson's and a Vons in Coronado. I am interested when I see boneless skinless chicken breasts for $1.99 a pound at Albertson's in Las Vegas because in Coronado, it is the same flier, and I buy boneless skinless chicken breasts there for $1.99 a pound. I know their rent is higher; their workers' compensation is higher; every tax is higher. They have invented taxes to put on their business people down there. They have invented fees I am not smart enough to think about. Why are the prices the same?

Maybe I have been here too long. Over the years, we have been told that business is going to flee Nevada. If we require some sort of participation from business, they are leaving. You know, they are not leaving California. Albertson's and Vons are still there. They are charging the same prices there and paying their employees more because of the workers' compensation and state income tax. They are paying more, and yet consumers pay the same prices for their wares here. Are we subsidizing the taxpayers of California? I do not know.

I have been here long enough to see the Group of No. No, we are not going to participate. Business is going to leave the State if this tax goes through. The banks were going to leave the State. Mindy Elliot testified in 2003 that the banks were going to leave the State. The banks never left the State.

I am really tired of all this. I am tired of us trying to fund education, and we get the same argument: oh no, we are not really 49th in the nation, we are really not last. You come up with some phony claim. We know what happens when you spend money on education. I went with Mr. Bacon maybe eight years ago to a magnet school in Las Vegas, one of the premier magnet schools, and every child was on a computer. The comment Mr. Bacon made was, "Well, I think they spent way too much on this. They have way too much invested." That is what it takes to get good students. Every student who graduates from that school is offered a scholarship walking out the door. Every student is offered a job walking out the door. But we invested too much. That is a bunch of bull.

We have a letter today from the UNLV Alumni Association. Russell Rowe, who walks these hallways with a blue badge, is president of the UNLV Alumni Association. The UNR Alumni Association also signed on to this letter. They do not want us to whack education any more. Nevada ranks 50th in the nation in likelihood of 19-year-olds being enrolled in college. Nevada ranks 49th in the nation for college participation by students from low-income families. We do not make the investment.

And it is not Senator Schneider and Senator Townsend who make the investment; it is the community, the business community who makes the investment or does not. I can move somewhere else where the business community is willing to pay. I will give you a hint. Call Somer Hollingsworth in Las Vegas. The number one reason they cannot recruit good high-tech, high-paying companies to Nevada is because of what we spend on education. That is the number one reason. Your listed the reasons people come here. I did not see education at the top; maybe you spun it.

I understand Mr. Vassiliadis's industry is in trouble. These senators over here who have been here 20 years have helped his industry. We have kept the lowest gaming tax in the world right here. We have changed laws and allowed them to make lots of money so they can go to foreign destinations and profit. Their stockholders have made big bucks over the last 20 or 30 years. Maybe he needs to go to his stockholders and say, "We need a little back now for all that profit you made because we need to keep our base going here." We have changed our foreign gaming regulations so these guys can get into business. They have built markets around the world on Nevada dollars that we let them take out of the State.

As for the chamber of commerce, well, I know I have been here too long. We could not do anything because we were on this rocket ship. Our economy was so good, we could not do anything for fear we would destroy the economy. Now that the economy is bad, we cannot do anything because the economy is bad. Two years from now when hopefully we will be recovering, we will not be able to do anything because we do not want to screw up the recovery. You heard the man from the Reno chamber of commerce putting conditions on us. Senator Townsend hit him on that, but there are the conditions. They are not going to negotiate. They are not going to come to the table.

Maybe next session I can be chairman of any committee I want. I will start a new committee: Commerce, Tax and Transportation. We are going to have a come-to-Jesus meeting then, because it is my last term. Aren't term limits great?

I am just getting a little off my chest. I have been here so long, and by golly, we have helped our economy grow here. We have helped everybody make billions and billions of dollars. I am really familiar with the home-builders industry. They have carted billions and billions in profits out of this State and left behind zero. They did not pay. In Phoenix, they were paying. In Riverside, they paid. In San Diego, they paid. They did not pay anything here. Why? Because we did not ask them, I guess. We may be asking.

SENATOR CARLTON:

I may be doing something unprecedented here, but this is a committee meeting, and that is where new things show up. Ms. Lau, how many retailers are there in this State? How many are in your association?

MS. LAU:

I am not sure of an exact number. Each business is counted as one. We have over 1,800 members, 1,300 of which are small.

SENATOR CARLTON:

But we know Smith's has how many, Walgreen's has how many.

MS. LAU:

Exactly.

SENATOR CARLTON:

I am not going to ask you what your yearly budget is and pry into that, but here is the thing. In the Governor's recommended cuts, there was $228,772 recommended to be cut out of a literacy program for children. When children learn how to read well, they buy books. The better they read, the more money they make. The more money they make, the more money they spend, and the more your members profit. What I would like to ask you is whether you would go to your members and ask them if we cannot replace this $228,772, whether they would be willing to. Senator Townsend asked about next time, but when it comes to kids, I will ask for money right now. I am not proud. We need to keep this literacy program intact. It is a good thing for the kids, and it is a good thing for your members. I will not put you on the spot now, but I would love to be able to report back to the body that this program is no longer in danger. We want your help to save it.

MS. LAU:

I can poll my members, but I think the literacy program is probably switched to the home and parents now. I do not know that piecemealing anything on the budget like that is appropriate, nor any part of an area where we can look and say, "What are you going to take on?"

SENATOR CARLTON:

So you are comfortable saying that your organization would not be willing to help out in these desperate times. They feel this is the parents' responsibility, and you will deal with it in the future.

MS. LAU:

I do feel it is the parents' responsibility. That is not my organization's position; that is mine. However, I do not have $200,000 in my budget. I would have to try to poll; I would have to try to assess. The money is just not there. The same way you are looking for money, we are too.

I have less than four figures in this year's budget to squeak through with any kind of offsetting expenses. The Association does not have the money.

TERRY GRAVES (Henderson Chamber of Commerce):

I will be brief, since a lot of the chamber business was discussed earlier. Since the economy has gone bad, the Henderson Chamber of Commerce has lost 450 members. That represents just under 25 percent of its membership. Those 450 folks have gone out of business. We do not have hard numbers, but probably another 10 to 15 percent are in survival mode. The CEO of the Henderson Chamber of Commerce indicates that these numbers are consistent with national numbers as put together by the U.S. Chamber of Commerce. Across the nation, membership loss has been in the neighborhood of 25 percent. I am also told that the City of Henderson's business license registrar has dropped from about 18,000 business licenses to about 13,000 over the past two years. Those 5,000 lost licenses represent about 28 percent of the licenses in the city. That is the perspective the Henderson Chamber of Commerce has right now.

PAUL ENOS (CEO, Nevada Motor Transport Association):

I appreciate the opportunity to speak here today, although I think none of us really want to be here in this mess. Over the last two years, my members have faced and continue to face a lot of the difficult decisions you are facing today. They have cut pay for their employees. They have laid off loyal, long-term employees. Some of them have ultimately gone out of business. Weekly, if not daily, I hear from members who tell me about how hard it is to stay in business, how they need a rate increase, how they cannot sell their trucks, how the price of fuel is impacting them and how they do not know if they are going to be able to keep their doors open. As Mr. Vassiliadis said, his industry is linked to all the others, and we are no different. The old saying is, "If you have it, a truck brought it," and it is true. We are impacted when other industries are impacted, and we are seeing that impact devastatingly right now.

Senator Carlton asked about associations and their budgets. At the peak two years ago, I had 586 members. Today, I am down to 502. That is a fairly substantial drop, though it is not as a big drop as I thought I would get, but it means the NMTA's revenue is down 40 percent. I have taken pay cuts; I have not taken a raise in three years; I cut my 401K down. I made those hard decisions because I have to show my members what we have to do to stay in business. It means I work a little harder, and it is difficult.

I have some statistics on losses. In the past two months, the trucking industry nationwide has lost 42,000 jobs. In Nevada, we have lost 2,200 jobs in the last two years, and that number is probably under-reported. I hear of trucking companies going out of business every day, and I think those 2,200 jobs are just drivers. There are mechanics, dispatchers, secretaries and other ancillary people. Today, I looked at the Bureau of Labor Statistics website, and there was an article on the front page titled, "Recession Leads to Lackluster Employment in the Trucking Industry." (http://www.bls.gov/opub/ils/trucking.htm) According to this article, "A dramatic slowdown in consumer demand has been crippling the Nation's trucking firms, making job losses during the current recession worse than at any time since the series began in 1990." You can see that we are an industry that is hurting. Since 2007, employment within the industry has declined for 35 months, resulting in the loss of 208,000 jobs, or 14.3 percent of employment. For a small but important sector like the trucking industry, those are real job losses, and they are felt.

Nevada is not a cheap state in which to own a truck. We are one of the most expensive states to buy and base-plate a truck. We have seen a decrease of 20 percent in the number of trucks based in Nevada over the last 3 years. With those trucks, there are jobs. It is not just the job of the guy driving the truck. It is also the job of the guy fixing the truck, the guy dispatching the truck, the trucking broker, the person answering the phone.

When I look at these statistics, they are not really a surprise to me because I talk to my members quite a bit. The numbers they give me are similar to the number in my association. Their revenue is down 40 percent. There is a company here in Carson City that had 50 employees 2 years ago. Today, they are down to 10. I used to brag about this company. It was a small company based in Nevada that was 100 percent CRB compliant. That may not mean a lot to you, but CRB is the California Resources Board, and it is very costly to make a truck environmentally compliant. Senator Schneider and I have talked about this. The company he contracted with went out of business, and he does not know if he is going to be able to open his doors. He called me last week and said, "I have laid off another 10 people."

I would love to tell you that I could come here today and offer more money from the industry I represent, but I cannot. Anything we offer would just further exacerbate the problem we are in. Less than 8 months ago, we increased taxes, and my members felt it. They felt it on their Modified Business Tax, but they also felt it in other ways that a lot of businesses did not. They felt it on changing the depreciation schedule. The guys who had the older trucks got hit. They had that freeze. How the depreciation schedule works with trucks is that they depreciate at a faster rate, but they keep their value for much longer. When we froze the depreciation schedule, the trucking industry got hit harder than anybody else on that little change. But we are part of the solution.

Senator Townsend, I will respond to your request and challenge. We will be at the table, and we will talk about how we can do some different things here in Nevada. I am a fifth-generation Nevadan on my mother's side and a third on my father's side. My grandfather and my great-grandfather came from Switzerland in 1904, and my grandfather from Turlock, California, in 1938, because this was the state where there was economic opportunity. We care about economic development and economic diversification. That is something I have been passionate about since 2003, talking about the Gross Receipts Tax and what it would do to economic development and economic diversification. I had Legislators tell me, "We have not heard anything from them. Nobody is here." Our trucking association has sponsored a guy by the name of Chris Holt who is with Nevada Business Connections to go to the state of Oregon to talk to the businesses up there who have just been nailed with an initiative petition to increase their taxes. They are looking at a 2-percent tax on their corporate income, and we sent people up there to look. What we are looking at for economic diversification is people who make things because they are the people who truck things. Is that a little self-serving? Yes, but the people who make things pay more money. You can have your family survive off that.

I grew up in the mining industry. I was born and raised in Elko. When I was born, my family lived in a single-wide trailer with a tip about a block away from the brothels. My dad worked in the mining industry, and he was able to send his kid to college, the first one in my family to go to college and get all the way through. He was able to buy a car and a house. I want to see that not just for people in the mining industry; I want to see it for everybody here. I believe a rising tide floats all boats.

There are some things we need to talk about when we talk about economic diversification. There are things companies look for, and yes, it is taxes. It is education. It is infrastructure. It is regulations, and that is one place we do really well. That is something we do not want to shift, because if we do we could see an exodus of business from Nevada. But it is also attitude towards business. Is there a good, friendly attitude towards business?

I am sorry if I have gone out of line. I am passionate about these matters. My former boss told me never to internalize the pain of my members, and I understand why she told me that. It is tough right now. The cuts you have been making these last days are similar to the cuts my guys have been making, and they are difficult. But if you are looking for an infinite pool of resources, it does not happen. Senator Lee and I had a conversation about the difficult decision he had to make in closing down a business and putting people out of work. Those are tough decisions to make, and those are the same tough decisions you guys are faced with here today, and I appreciate that. But I just wonder if we are facing the law of diminishing returns, especially when we just increased taxes 8 months ago, and here we are looking to do it again.

SENATOR CARE:

Mr. Graves, you may not have been here, but I asked your counterparts from Reno-Sparks and Las Vegas about companies looking to relocate to Nevada and then choosing not to because they do not like what they see in the way of public education or higher education. Do you have any data on that, even if it is just anecdotal?

MR. GRAVES:

I do not personally. I have been somewhat involved with the Henderson Development Association over the years. The only story I know, and I do not if it is a valid story or not, is that there are companies leaving California and going past Nevada, Arizona, Utah and Idaho. I do not know if that is because some of the actions we have taken in the last two or three sessions or not. I cannot really speak to the reasons for it. I would suggest the Economic Development people respond to that question.

MR. ENOS:

I would also like to take a whack at that question. For certain jobs, they are looking for certain things from a university system. We do not have a lot of electrical engineers here, so we do not attract high-tech companies. You look at the logistics and distribution industry, and though it is sometimes maligned, it does help bring people to Nevada who make things. We have a great program at the University of Nevada that may be cut by this that has helped diversify the economy. It depends on what kind of jobs we are looking for. My father always told me that in the mining industry, human capital is the easiest thing to move. You cannot change where the gold is. That was true in Elko. I went to school with kids from Indonesia, Uzbekistan, South Africa and all over the world who came to Elko. Human capital is important.

BILL UFFELMAN (Nevada Bankers Association):

The difficulties you are facing here are tremendous. I would like to review a little history for you.

From 2003 to 2009, Nevada banks paid their payroll tax at a rate slightly more than 3 times as high as the rest of the community. With the amendments you made in 2009, we are now roughly 50 percent higher, as far as tax rates go. The irony is, I represent the FDIC-insured banks. I do not represent mortgage companies and others. The total has fluctuated down to some $18 million. It was as high as $22 million at one point. The reduction in payroll in many ways is probably related to the mortgage community rather than banks. Banks have laid off; they have had employment reductions; they have had pay reductions as reflected in their taxes. But on average, since 2003, the financial institutions have in fact paid in about $20 million a year in payroll taxes fairly consistently.

The FDIC-insured financial institutions pay a branch tax of $7,000 per year. That has remained at roughly $3 million in and out. We have had some branch closures here, and we have had bank closures and bank failures. Some of the branches have been acquired by other banks, and so there is shifting around. But again, year in and year out, we have paid $3 million a year in branch taxes.

The state-chartered banks fully fund the Department of Financial Institutions. All of their regulations and examinations, everything George Burns and his staff do in the regulating of banking, is paid for by the banks. Up to this year, banks actually were paying more than their share. Mr. Burns regulates other institutions, such as credit unions and payday lenders. We were paying more than 50 percent of the cost of the organization and consuming somewhere around 40 percent of his expense. Thus, we were subsidizing other organizations. In the last couple years, Mr. Burns has begun modifying their license fees and the fees they pay for their examiners, so it is coming back to being more even. At the same time, he has incurred expense relative to bank closings. Yesterday, when you swept $250,000 out of his audit account, that was money the institutions paid in. He has another fund he lives off of; he has about 7 months of reserves in there. That is the fund he uses if he has a bank failure. If a bank is not acquired, Mr. Burns has to take it over and operate it while it winds down its affairs. On that note, there are other banks here in Nevada that in all likelihood are going to fail this year.

The losses in the banking industry have been tremendous. Ms. Lau commented on the commercial real estate market, the vacancy rate. When you add in the under-utilization rate, banks have had to go in and modify the terms of commercial real estate loans, defer principle payments and spread out interest payments. At the same time they are doing that, the FDIC regulator comes in and looks over their shoulder and says, "What is your current appraisal? Have you had it appraised in the last 6 months? Did you have it appraised last week?" Every time something goes bad, we are sent out to have another appraisal done, and we pay for those appraisals. The failure of businesses and the collapse of the commercial real estate market has made commercial real estate less valuable, which then puts pressure on the borrowers because of the terms of their loans, so that they have to in fact make more investment in their business. It is very tough.

On the residential side, the typical Nevada community bank did not make a residential mortgage. Many of the residential mortgages were made by non-banks. They are gone; they do not live here anymore. We have been funding our half of the mediation expenses since July 2009 on the residential side in addition to all the taxes we paid. You have heard of IOLTAs, Interest on Lawyers' Trust Accounts. Under this rule, lawyers are required to require of their banks roughly 2-percent interest on those accounts. That has raised about $2 million a year to fund legal services and other indigent legal programs. The bank is not making anything on those accounts, and yet they are turning around and having to pay 2 percent. If it was your personal checking account, you might make 12 cents over the course of the year on several million dollars; for trust accounts, we are paying 2 percent. It is not a tax, but the banks are contributing that.

At the same time, banks in this state are huge contributors to various education programs, both at the universities and in K-12. We are huge contributors in social welfare programs, both dollars and man-hours. Look at the board of United Way and see who is serving on it. At the end of December 2009, the banks filed their quarterly reports to the FDIC. All of that information is made available.

SENATOR TOWNSEND:

Point of order. I believe the Majority Leader asked these individuals to come here to talk about the fees that have been put on the table, not to give a lecture about the history of their industries. I do not want to go off into the history of the banking industry. We are here to talk about one fee that has to do with notices of foreclosure and the charges therein.

SENATOR CARE:

Thank you, Senator Townsend. Mr. Uffelman, the Senator is correct. This began as a discussion about fees and the extent to which industries should foot the bill for being regulated and what solutions you are prepared to offer to help us with this awful problem we have.

MR. UFFELMAN:

I believe I commented on the fact that we do pay for our regulation and have always done so.

The reason I was going into the state of banking on December 31, 2009, was to show you that it is poor. We had two community banks with net profits; everybody else was upside down, under water and trying to survive. I saw a piece of paper earlier this week that talked about $40 million in new Notice of Default fees. Every time you file a Notice of Default, say on a residential property when the borrower fails to make a payment, you have to go down to the courthouse and file. If you impose that $500 fee, by the time you got to the final one, you have another $2,500 of fees tied up in that property. Since July, roughly 10 percent of the people defaulting on mortgages have asked for mediation. The fee for mediation is another cost the lender has to recover at some point.

The irony is that the industry is in the swimming pool drowning, and we are talking about pouring more water in there just in case. This is additional expense to banks that have already lost millions of dollars. My bankers have said to me that while they were hemorrhaging last year, they are bleeding now. If they can slow the loss of blood, they will be here in 2011. If they cannot, they will be gone. You asked earlier what associations have done about expense. I have cut our expenses almost 30 percent. My dues payers are gone, and I did not raise dues on the remaining payers. The ones that are gone are flat gone, and we are operating on far less money than we did before.

The reason I went through the history of what we have paid for the last six years was that if you take the whole budget, our percentage of the budget has increased. We have been paying a level amount across the board, month in, month out, while others have been a declining amount.

SENATOR CARE:

Let me ask you briefly about the TARP funds. My recollection is that those monies went primarily to four large institutions that were "too big to fail." Which of those funds, if any, went to Nevada or Nevada branches? Which institutions are we talking about? What was done with the money, and where are those banks now?

MR. UFFELMAN:

That acronym stands for Trouble Asset Relief Program. The banks that were called in on Columbus Day of 2008, the big banks, and told, "You will sign up for this program," several of them did not want to participate, but the U.S. Treasury Secretary decided that it would look bad for some of the banks if they did not all participate, so they all took the money. The federal government got paid 5-percent interest on that money. That was 5 percent after taxes, so a bank had to go out and earn somewhere between 8 and 9 percent to be able to pay the 5 percent interest. Once they paid off the money, then they had to negotiate to buy back the stock warrants that they had to give the government representing that money.

Here in Nevada, a holding company, Western Alliance, which owns First Independent Bank and Bank of Nevada, got TARP money. Toward the end of the program, the Bank of George in Las Vegas, a small community bank, got TARP money. City National Bank out of California got TARP money, and they have paid it back. Zions Bancorporation, which owns Nevada State Bank, also got TARP money. The general, run-of-the-mill community bank in Nevada did not get a dime of TARP money. They did not get any of the bad commercial real-estate loans were not purchased from them, and they were not able to move them off their books. Virtually all the community banks in Nevada are under memorandums of understanding or under direct orders. The order tells them to raise capital. One bank has to get $36 million in new capital. I do not know where they are going to get it. They are also under orders to get rid of bad loans, sell them off. You cannot get rid of them because the amount of the loan is encumbered, and thus their ability to lend is encumbered. Senator Lee asked earlier about lending. Nationally, in 2008, something in excess of 60 percent of all loans were not made by banks. They were made by non-bank financial institutions, insurance companies and so on. Since then, banks have increased lending, but they cannot make up the 60 percent. They are not big enough.

GEORGE FLINT (Nevada Brothel Owners Association):

In 48 years of walking these halls, this is the second opportunity I have had to sit on the Senate floor and speak. I feel very honored. I am not here flippantly. I am not here to embarrass anyone, and I know my very presence unnerves some of you.

Earlier in the last Session, Senator Coffin introduced a bill that would have put a $5 fee on every single encounter in the legal brothel business. That measure failed in committee by a vote of 4 to 3, and I wonder if it would have failed today under these circumstances. Maybe it would, maybe not. My client is going through the same degree of financial downturn that you have been hearing all afternoon. However, I am not going to ride that horse with you. I am rather going to tell you that the $5 we offered in the last Session is still on the table. It would create approximately $2.5 million a year, which would help Senator Carlton's concerns and some others.

How respectable would that be, and how well received would that be? I know that each one of you have your own individual concerns and feelings on that. I know every one of you. I have studied you. I was here when you came here. I know your sensitivities and your cautions. I know your limit of even understanding my presence and that of my client. Some 60 to 70 percent of the people in Nevada consistently support us, even 60 to 70 percent of the people in Clark County. But right now, I want to be on the record that we are still there with our $5, with that $2.5 million a year. We are ready to start tomorrow. We are ready to give that where it is needed. We are happy to offer it. We do not have a complaint in the world. Some of that will have to come out of our own pockets; in some cases, we will pass it on as a new State fee. We are anxious to have that opportunity, and I will tell you that my board unanimously agreed for me to come before whoever would listen to me and make that offer.

Secondly, Senator Care, thank you for allowing me to say what I am going to say next. There is an industry currently operating in Clark County that I estimate is a $5 billion a year industry. It is illegal sex for sale. It is out of control and peppered with crime. The Las Vegas Metropolitan Police Department cannot do much about it—but I could. I know how to take that illegal industry and turn it into a legitimate, legal, highly-regulated business, and I am prepared to say it would be worth a minimum of $250 million a year to the city, county or State, year in and year out. I have used the arithmetic we worked with within the legal industry in the rural counties, and it would be a billion-dollar-a-year minimum legal industry in Clark County. We are prepared to commit 20 percent of that for public services and other needed facilities. I cannot find very many people who do not think that is a good idea.

I would like to suggest that the only thing prohibiting us from proceeding with this is your blessing. I have talked with members of the county commission. I have talked with a portion of the city council in southern Nevada. I made seven trips from Reno to southern Nevada last year working on this subject. All we have to do is rescind an antiquated 400,000-population threshold as it relates to legal prostitution, and we could do away with a $5 billion illegal industry and turn it into some good working dollars for the people of this State.

I am pleased that you allowed me to even proceed with this testimony because I know for some of you, it is not an easy subject to address. I wondered if the varnish would come off the walls when I started to speak, and it has not. I am grateful for the fact that even though some of you have religious, moral, practical and even, on occasion, political concerns about this particular endeavor and what it might mean for the state, most of you are usually willing to sit down and reason with me about it.

Finally, New Zealand, Australia and several areas of central Europe have now bitten the bullet and regulated and legalized this activity. It may be time to do it statewide.

Thank you for your willingness to allow me to sit here and speak on this subject.

SENATOR CARE:

Thank you, Mr. Flint. This is a democracy, and this is a citizen legislature. We invited industries to speak, and you did that.

SENATOR TOWNSEND:

Let us have no misunderstanding about what is going on with regard to our purpose here today. There is a worldwide recession that was not started by anybody in Nevada, and we are reacting to it. That is the biggest challenge we have. If we could simply pass a workers' compensation law, add a fee and fix the problem, we would. However, because of the impact on a state such as ours of the downturn and implosion of the financial markets worldwide, that is not possible, and that is why we are here.

As we move forward, Mr. Flint, I know for a fact that there will be a proposal worked on extensively over the next six months with regard to expanding sales tax on services across the board and reducing the rate. That will be brought to this body. I hope they consider your offer because you represent an industry that does provide a service, and there is no reason that debate should not go on in these halls. We are all adults here, and we can discuss it without snickering. I appreciate the dignity with which you handle yourself and have for all the 30-plus years I have known you.

Mr. Uffelman, unfortunately, you represent an industry that is probably the reason we are all here. With all due respect to you, you did not create it, and no one bank in Nevada created it. However, those investment instruments were used inappropriately for many years, and everyone has plenty of blame—Republicans and Democrats in Congress, Republicans and Democrats in the White House. It has gone on for years, unregulated financial products that proved to bite us all in the backside.

Let us go specifically to your position with regard to fees. There is a $25 fee required now when someone files a notice of default that goes to the court. That is for all notices of default. If an individual with a private residence chooses to go to mediation, he or she must provide an additional $200 matched by the lender to pay the cost of mediation. Let us make no bones about this. If mediation would have gone on without government intervention, there would not be any fees. However, many of your members did not want to negotiate with their borrowers, which is amusing to me since most of the assets were substantially less than the loans on which they were made. Why you would want the asset back I have no idea.

I want to fully disclose: I am a shareholder in banks, and I sit on a board. I speak with just a little bit of knowledge.

Your industry rejected the efforts of both parties in both Houses and Governor Guinn to come to the table in 2003 to talk to us about how best to have your role played in the revenue picture we needed to deal with in 2003. This is before your time. The result, when you do not come to the table and work with us, is the fees you are complaining about today.

This is not about lecturing you. I am too old for that, and you and I have been good enough friends not to do that. It is to set the record straight. As we move forward, there are those who will say that the out-of-state banks do not pay anything here and there should be a bank tax or a corporate tax. That is a view that needs to be respected. However, if you do not like that view, you need to be at the table and explain how the role of your industry can help us get to where we want this state to go. Your industry has evolved from bricks-and-mortar to electronic banking and back to bricks-and-mortar. Banks fail, banks acquire and are acquired. You drive down the street today, and tomorrow there may be another name on that bank, and we understand that. We have gone through a lot of that with our own.

Your role is to work with us, to help us understand those changes in your industry and how best the role can be played. The people I work with here to have to listen to their constituents say, "I have called my bank 200 times. I cannot get them to the table. I cannot figure out what I can do. My payment is X; I think I can make three-quarters of that, and I cannot get anybody to return my call." That is what we hear. Do you think any of us wanted to pass that bill last time? We were not thrilled about that. We thought everybody should sit down and work together. We are Nevadans. You go to your bank and tell them you have a problem, you cannot make the payment, and you ask to redo the terms. That is the problem.

I know shareholders have huge demands, and we all do. You also have to be realistic about what is out there for the long term, not the short term. The biggest problem this country has faced is our short-term mentality. What did the balance sheet look like today, this week, this month, this year? That is the single biggest problem. Do you want to know why the Japanese and the Koreans killed us in the car business? One simple reason: they looked long-term. They did not look quarterly. As soon as the banking industry starts looking long-term about the growth and health of this country, the better off we will be.

It is hard for me to stand here and be kind when we see what has happened when our previous investment banks were granted commercial-bank status overnight. I think it took 48 hours, though I may be off by an hour. Unbelievable. They were getting billions from every single side of the potential equation, and TARP was only one of those revenue streams for banks. There was an expectation by both parties that the money would be turned around and lent out to those who needed it. That has not happened. We are a profitable bank; we did not take TARP money. We are profitable because there is not a person in the world who can qualify for a loan, so we do not have anything to worry about. Nobody has to worry about paying us back because we do not give you any money. And that is the problem.

What I am saying to you is that I think it is best for you to go back to your member banks and educate them that they are not monoliths sitting out there. Every one of their customers—businesses, high-end individuals and average customers—have families who make the difference in this state. They need to look at it from that perspective. We all have a dollar sign on us, and we understand that; we are going to make money for you. But those are the people they are sent here to represent. They need to better understand how it works here. They have no clue.

I understand they were busy working today. They got ten minutes. We are going to be here a while. Will I see any of your members here tonight or tomorrow? The answer is no. They are busy with their own families, hopefully improving their banks. This is their process, and they are not here to help us be educated and understand our challenge. I put the same challenge to you: that you will come with an open mind and ideas in this next challenge we face. If you do not, you are going to have the same thing happen to you that happened to you in 2003. We are not there; we are not giving; we are not involved. You do not like what you got? Sorry. That is what happens when you leave it up to the 21 of us.

Get your members involved. Tell them that a contribution to the United Way is not the answer to our problem. We appreciate that, and so do those who use those services. But this problem is so large. They need to come in and help us with our challenges. Are we doing our own banking? Are we moving money around correctly from the Treasurer's Office? Is the comptroller doing the right thing? Is every state agency doing the right thing? You can help us with this. Do not come and get into the competitive bidding process and say, "We hope we win." Help us with our process. You can bring intellectual capital to this debate that is sorely needed.

As a member of the chamber or whatever organization you are part of, Mr. Uffelman, get engaged. Be part of it. You are not going to like it all; it is not a pretty process. But you have to bring your intellectual capital to this table. If you are not at the table, you will be left out, I can assure you. I will not be here to make that decision. I can assure you that they will leave you out. That is what our process does. Come to the table and be part of it. Mr. Flint will be there; he has been offering for 40 years. I hope you can sit next to him and be part of that solution. But let us not get into TARP or public/private investment panels because it is not a winner for you. This downturn is a tragedy of American history, so let us see how we can get out of it.

SENATOR COFFIN:

Thank you for coming here, Mr. Flint. You are the only person who has sat at that table or been in this building for the last three days who has actually offered to pay money to try to help the mentally ill, the sick, the aged. I think we should take you up on it. As chair of the Senate Committee on Taxation, I hosted hearings on the subject of a tax on the legal brothels. It was capably drafted by our Legal Counsel, and it had a vote, the first vote on that subject in the history of the Nevada Legislature. I checked with Legal Counsel last week, and they told me they could draft that same proposal as a fee, not a tax. Our rules require that no amendment or bill can be introduced or requested except by the Committee of the Whole. I intend to request an amendment to the first available bill, either on second reading or third reading, to accommodate this fee, which will yield between $2 million and $2.5 million a year. Mr. Vice-Chair, do you understand it the same way?

SENATOR CARE:

What I intend to do after we conclude the testimony is take a recess and reconvene at the call of the leadership.

SENATOR COFFIN:

I appreciate that.

Committee in recess at 5:01 p.m.

Reconvened at 6:43 p.m.

SENATOR HORSFORD:

We will have a general discussion regarding local government, the state of their negotiations and some of the surrounding issues. This is an attempt to bring attention to some of the concerns on both sides of this issue.

BOB CASHELL (Mayor, City of Reno):

Thank you for letting us visit with you. The League of Cities felt it would be disingenuous to be negotiating in good faith with our bargaining units while going to the Legislature seeking modification to NRS 288. Therefore, we feel opening NRS 288 for discussion should be reserved for a regular Legislative Session when municipalities, Legislators and labor groups can sit down and work on a mutually agreed solution. To do otherwise would simply impede ongoing negotiations with our bargaining groups. I am in the process right now and do not want to be unfair to the labor groups I am working with. We feel not doing this at this time would be beneficial to you as well because you have other matters bigger and worse than this to take care of. I have been assured by a lot of people in our bargaining groups that they would be willing to sit down and work with us to see if we could come up with some things. Over the years, we have blamed you for everything that happened, but we understand the problems going on, and we want to work with you. However, we felt this would be a better discussion for a longer Session than at a three- or four-day Session.

GENO MARTINI (Mayor, City of Sparks):

I agree with Mayor Cashell. NRS 288 was enacted a long time ago, and it is not something that was taken care of overnight. We thought it would be better if left for a Session when there could be more discussion. Perhaps we could put together a group of Senators, Assemblypersons, mayors and union representatives to talk about it and see what things we could come to agreement on.

MAYOR CASHELL:

We also felt that after all these promises have been made to people, we need some concessions from the bargaining groups with which we are negotiating right now. There will probably be a time when we can draw a line in the sand and say everybody hired after this date fits under another program, because we have to address the monumental financial troubles going on now.

SENATOR HORSFORD:

We appreciate your leadership and your partnership as we serve our mutual constituents together. We are all serving the same people, and our problems at the State level impact local government as well. We did not want to make any decisions without hearing from the leaders from local government.

SENATOR AMODEI:

I find it interesting that in the last 180 minutes, people in the private sector were asked absolutely positively to commit to stuff in 2011. It is like we want to leave NRS 288 off the table, and at the same time, we want an absolute commitment from the private sector to come back in 2011 and talk about what you are going to pay. I guess that is just reality, but it is worth pointing out.

JEFF FONTAINE (Executive Director, Nevada Association of Counties):

Yesterday, the NACO board of directors took a neutral position on the issue of opening up NRS 288 at this time, while still reserving the right to consider any specific proposals relative to this section of statute. We conveyed that position to the Senate leadership yesterday. The NACO board has not met since yesterday, but today, I discussed this issue with NACO leadership. They have again decided to take a neutral position on any specific proposals relating to the open meeting laws, collective bargaining and such matters.

The NACO board continues to have some general discussion about needed reforms to NRS 288, but they have not taken any specific positions on any measures.

CONSTANCE BROOKS (Clark County):

Like the League of Cities and NACO, we feel this is an inopportune time to discuss modifying NRS 288. In addition, we have not seen any formal recommendations or proposals for our board of county commissioners to consider and consider a formal stance. We look forward to working with you in the future to make necessary changes.

SENATOR HORSFORD:

Can either of you discuss where you currently are in the negotiation process? Are you seeing any positive concessions being offered in the process?

MS. BROOKS:

Our negotiation process has just begun within the last two weeks. I cannot report as to whether they are going well or not. So far, our staff is in negotiations with the firefighters, the district attorneys' association and several other groups. As we begin to make formal recommendations, we feel this would inhibit the process.

MR. FONTAINE:

I understand there are several counties that have been negotiating their contracts with success, in terms of getting concessions to help them meet their budgets and reduce expenditures. However, I cannot speak on behalf of all of them.

SENATOR CARE:

Ms. Brooks, can you tell us where Clark County is right now on the number of employees who have been laid off, as opposed to those positions that are going to remain vacant, using attrition to decrease the payroll?

MS. BROOKS:

Currently, we have approximately 500 vacant positions. I do not have the exact number of layoffs at hand. It has been about 100. Those are from the Department of Comprehensive Planning and the Department of Building Inspections.

SENATOR HORSFORD:

I have received a letter from Sheriff Gillespie from the Las Vegas Metropolitan Police Department on this matter which I will place into the record.

February 26, 2010

Speaker Barbara Buckley
Nevada Assembly, 401 S. Carson Street, Carson City, Nevada 89703
Madame Speaker:

It has come to my attention that the Legislature is considering modifications to NRS Chapter 288—Relations Between Governments and Public Employees. I am concerned that opening NRS 288 for discussion at this juncture could negatively impact our current, on-going negotiations with our bargaining associations.

Because of the complex nature of collective bargaining and the necessity to have in-depth analysis and review of the potential impact of any changes to the NRS, I request that you consider reserving that discussion until the regular legislative session. This would allow all affected parties, both government entities and public employee associations, the ability to fairly represent their concerns and come to consensus moving forward.

Thank you for your consideration as you work diligently to represent the best interest of our State during this difficult Special Session.

Sincerely,
Douglas C. Gillespie, Sheriff
Las Vegas Metropolitan Police Department

SENATOR HORSFORD:

I would like to submit a BDR request to the Committee of the Whole.

This resolution urges local government employers and local government employee organizations to mutually address the impacts of the budget shortfall. Specifically, we believe that in this economic downturn, there needs to be a recognition that individual groups, employee groups, employer groups, public and private, should work together to reach agreement on how to best address the shortfall. We are addressing that during this legislative session for the State of Nevada; local governments across the State are faced with the same challenges. This resolution would encourage both local government employers and local government employee organizations to work together at the negotiating table to reach a balanced approach for how they can best address their budget issues at the local level.

While this does not take into account all of the issues some would like, it does send a clear legislative intent that there should be a recognition of shared sacrifice and shared responsibility in addressing these issues together. As the State Legislature, we cannot interfere with a current contract. That is not our place. But it is our place to show leadership and to bring parties together to work in partnership. That is what this resolution does.

Finally, I would like to commend my colleagues, Senator Townsend, Senator Raggio and others, who during this afternoon's discussion in the Committee of the Whole had a very open, frank and honest dialogue about what we all need to do as Nevadans going forward to address our budget problem. Senator Townsend made comments regarding certain industry groups in the private sector being at the table, working to identify ways in which they can participate in a solution. I commend you, sir, and I commend your leadership for being willing to be very direct. These groups need to be part of that solution. I also have a message. That message is to those other constituent groups—the labor organizations and the employee groups—that there is a part in this for you as well. You also can come to that table, and there are also things you can do in good faith to show you are willing to have shared sacrifice.

This resolution specifically speaks to our legislative intent to avoid layoffs at all cost. That is at every level: local and state, public and private. While we cannot in every respect tell school districts and local governments how they will ultimately make those decisions, we hope you will understand the importance of shared sacrifice and recognize that we are all in this together.

Just as my colleague said to the business community, I would urge every employee group and labor organization throughout Nevada to participate with your employer groups, to go to the table and negotiate in good faith what you can to protect the jobs of all Nevadans. That is what this resolution does, and I ask this Committee's support in its adoption.

Senator Wiener moved to introduce BDR R-38.
Senator Townsend seconded the motion.
Motion carried.

Senator Schneider moved to adopt Senate Concurrent Resolution No. 1.
Senator Raggio seconded the motion.
Motion carried.

On the motion of Senator Wiener and second by Senator Townsend, the committee did rise, return and report back to the Senate.

SENATE IN SESSION

At 7:14 p.m.
President Krolicki presiding.
Quorum present.

REPORTS OF COMMITTEES

Mr. President:

Your Committee of the Whole, to which was referred Senate Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVEN A. HORSFORD, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

By Senators Horsford, Raggio, Townsend, Lee, Care, Amodei, Breeden, Carlton, Cegavske, Coffin, Copening, Mathews, McGinness, Nolan, Olsen, Parks, Rhoads, Schneider, Washington, Wiener and Woodhouse:

Senate Concurrent Resolution No. 1—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

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 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.

Senator Horsford moved the adoption of the resolution.

Remarks by Senator Horsford.

Senator Horsford requested that his remarks be entered in the Journal.

SENATOR HORSFORD:

This resolution urges local government employers and local government employee organizations to mutually address the impacts of the budget shortfall. Specifically, we believe that in this economic downturn, there needs to be a recognition that individual groups, employee groups, employer groups, public and private, should work together to reach agreement on how to best address the shortfall. We are addressing that during this legislative session for the State of Nevada; local governments across the State are faced with the same challenges. This resolution would encourage both local government employers and local government employee organizations to work together at the negotiating table to reach a balanced approach for how they can best address their budget issues at the local level.

While this does not take into account all of the issues some would like, it does send a clear legislative intent that there should be a recognition of shared sacrifice and shared responsibility in addressing these issues together. As the State Legislature, we cannot interfere with a current contract. That is not our place. But it is our place to show leadership and to bring parties together to work in partnership. That is what this resolution does.

Finally, I would like to commend my colleagues, Senator Townsend, Senator Raggio and others, who during this afternoon's discussion in the Committee of the Whole had a very open, frank and honest dialogue about what we all need to do as Nevadans going forward to address our budget problem. Senator Townsend made comments regarding certain industry groups in the private sector being at the table, working to identify ways in which they can participate in a solution. I commend you, sir, and I commend your leadership for being willing to be very direct. These groups need to be part of that solution. I also have a message. That message is to those other constituent groups—the labor organizations and the employee groups—that there is a part in this for you as well. You also can come to that table, and there are also things you can do in good faith to show you are willing to have shared sacrifice.

This resolution specifically speaks to our legislative intent to avoid layoffs at all cost. That is at every level: local and state, public and private. While we cannot in every respect tell school districts and local governments how they will ultimately make those decisions, we hope you will understand the importance of shared sacrifice and recognize that we are all in this together.

Just as my colleague said to the business community, I would urge every employee group and labor organization throughout Nevada to participate with your employer groups, to go to the table and negotiate in good faith what you can to protect the jobs of all Nevadans. That is what this resolution does, and I ask this Committee's support in its adoption.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

GENERAL FILE AND THIRD READING

Senate Bill No. 3.

Bill read third time.

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

Amendment No. 5.

"SUMMARY—Revises provisions ~~[governing unpaid furlough leave for state employees and requires closure of most state offices on Fridays.]~~ *relating to governmental administration.* (BDR S-16)"

"AN ACT relating to ~~[state employees;]~~ *governmental administration;* revising the amount of unpaid furlough leave that certain state employees are required to take during the 2010-2011 Fiscal Year; providing for a temporary reduction in salary in lieu of furlough leave for state employees who are exempt from taking unpaid furlough leave; requiring the approval of a plan for additional overtime to be approved before the overtime worked; providing for a temporary reduction in compensation for employees of the Senate and Assembly; providing for the closing of state offices on certain days and the revision of the workweek of state employees with certain exceptions and exemptions; temporarily authorizing ~~[local governments]~~ *school districts* to require employees to take unpaid furlough leave; *prohibiting certain additional compensation and adjustments to the salaries of newly hired classified state employees;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law requires state employees to take unpaid furlough leave during the 2009-2011 biennium and authorizes exemptions from that requirement.

(Sections 3 and 5 of chapter 391, Statutes of Nevada 2009, pp. 2159 and 2161) Section 1 of this bill increases the amount of unpaid furlough leave for full-time state employees from 8 hours per month to 10 hours per month for the 2010-2011 Fiscal Year. Section 1 also provides flexibility for employees of the Budget Division of the Department of Administration, Legislature and Legislative Counsel Bureau to use the unpaid furlough leave in increments of less than 1 day in the same manner as classified employees. In addition, section 1 authorizes ~~[local government employers]~~ *school districts* to require employees to take unpaid furlough leave unless the requirement would conflict with a collective bargaining agreement. *Section 1 also provides that the furlough requirements do not apply to a board, commission or agency the sole function of which is regulating a profession, occupation or business and which is not subject to the State Budget Act.*

Section 3 of this bill provides that *certain exemptions from the furlough requirement must be approved by the Interim Finance Committee and that* the salary of any employee who is exempt from the furlough requirement must be reduced by 5.75 percent in lieu of furlough leave for the 2010-2011 Fiscal Year.

Existing law provides that employees who are subject to the furlough requirement be held harmless in the accumulation of retirement service credit and reported salary for purposes of the Public Employees' Retirement System. (Section 4 of chapter 391, Statutes of Nevada 2009, p. 2160) Section 2 of this bill provides similar protections for *state* employees whose salaries are reduced by 5.75 percent in lieu of furlough leave ~~[.]~~ *but provides school districts with discretion as to whether such protections are provided to its employees.*

Existing law sets forth the compensation of employees of the Senate and Assembly. (NRS 218A.605) Section 4 of this bill requires that such compensation be reduced by 5.75 percent in lieu of furlough leave and prohibits certain step increases in that compensation for the 2010-2011 Fiscal Year.

Existing law requires that state offices be open for the transaction of business for at least 8 hours on every day of the year, with the exception of Saturdays, Sundays and legal holidays. (NRS 281.110) ~~[Section]~~ *Except for certain boards, commissions and agencies, section* 5 of this bill provides for the closing of state offices on Fridays and for the revision of the regular workweek of state employees to four 10-hour days. Section 5 also authorizes exemptions for state offices that must remain open on Fridays because of the need to provide appropriate services that are necessary to the protection of public health, safety and welfare. Section 5 further provides an extension of the time for filing any paper with or complying with any deadline involving a state office that is closed on Friday if the last day for filing the paper or complying with the deadline falls on that Friday. Section 6 of this bill provides additional exceptions to the requirements of section 5 for the employees of the ~~[Department of Corrections and the]~~ Nevada System of Higher Education.

Section 7 of this bill provides that certain additional overtime required by state agencies may only be worked pursuant to a plan that is approved before the overtime is worked. *Section 9 of this bill revises the calculation of overtime to account for workweeks consisting of 8-hour or 10-hour days and with respect to corrections officers of the Department of Corrections.*

Existing law authorizes certain supplemental compensation and adjustments to the base rate of pay of classified employees for various purposes. (NRS 209.183, 284.175, NAC 284.206-284.218) Sections 7.5 and 8.5 of the bill prohibit such supplemental compensation and adjustments to the salaries of classified employees hired on or after March 1, 2010.

Section 13 of this bill declares void all exemptions from furlough leave that were granted on or before June 30, 2010, but authorizes the reapplication for and granting of such exemptions. Section 14 of this bill sunsets ~~[this bill and the provisions which originally required the furlough leave]~~ on June 30, 2011 ~~[.]~~

, the requirement: (1) for unpaid furlough leave or a salary reduction in lieu of such leave; (2) that state agencies are closed on Fridays; and (3) that state employees work 10-hour days.

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

Section 1. Section 3 of chapter 391, Statutes of Nevada 2009, at page 2159, is hereby amended to read as follows:

Sec. 3. 1. Except as otherwise provided in *subsection 9 and* section 5 of this act:

(a) For the period beginning on July 1, ~~[2009,]~~ *2010,* and ending on June 30, 2011, each employee of the State, other than a classified employee ~~[,]~~ *or an employee of the Legislature, Legislative Counsel Bureau or Budget Division of the Department of Administration,* shall take 1 day of unpaid furlough leave each month.

(b) Except as otherwise provided in subsection 5, the furlough requirement applies to all branches of state government and includes the Nevada System of Higher Education, the Public Employees' Retirement System and all other entities of state government.

➥ The requirements of this section do not apply to employees of the Department of Cultural Affairs whose standard workweek was reduced from 40 hours to 32 hours effective July 1, 2009.

2. Except as otherwise provided in this subsection, for the purposes of this section "1 day" consists of the number of hours an employee works in a standard workday, but not more than ~~[8]~~ *10* hours. An employee must take 1 day of furlough leave each month and cannot take portions of a day that combine to total the amount of the required monthly furlough leave. A full-time employee whose standard workday is longer than ~~[8]~~ *10* hours shall take ~~[8]~~ *10* hours of furlough leave on a single workday and may take annual

leave for the remainder of the day, work a reduced schedule that day or work a modified schedule approved by his employer. An employee who works less than full time with a fixed schedule shall take as furlough leave the portion of ~~[an 8-hour]~~ *a 10-hour* day that his scheduled workweek or biweekly schedule bears to a full-time workweek or biweekly schedule.

3. For the period beginning on July 1, ~~[2009,]~~ *2010,* and ending on June 30, 2011, each employee in the classified service of the State ~~[,]~~ *and each employee of the Legislature, Legislative Counsel Bureau and Budget Division of the Department of Administration* shall:

(a) If he is a full-time employee, take ~~[96]~~ *120* hours of unpaid furlough leave . ~~[each year.]~~

(b) If he is employed less than full time, take a number of hours of unpaid furlough leave each year which is equal to the average number of hours worked per working day multiplied by 12.

➥ An employee in the classified service of the State *or an employee of the Legislature, Legislative Counsel Bureau or Budget Division of the Department of Administration* may take unpaid furlough leave in portions of a day that combine to total the amount of required yearly leave. To the extent practicable, full-time classified employees *and full-time employees of the Legislature, Legislative Counsel Bureau and Budget Division of the Department of Administration* should take ~~[8]~~ *10* hours of unpaid furlough leave per month. To the extent practicable, a classified employee *or an employee of the Legislature, Legislative Counsel Bureau or Budget Division of the Department of Administration* who works less than full time with a fixed schedule should take as unpaid furlough leave the portion of ~~[an 8-hour]~~ *a 10-hour* day his scheduled workweek or biweekly schedule bears to a full-time workweek or biweekly schedule.

4. *For the period beginning on July 1, 2010, and ending on June 30, 2011, except as otherwise provided in subsection 8 and notwithstanding any other specific statute to the contrary, a* ~~*[local government employer]*~~ <u>*school district*</u> *may require each employee to take unpaid furlough leave in the amount and manner determined by the* ~~*[employer.]*~~ <u>*school district.*</u>

5. Furlough leave pursuant to this section must be scheduled and approved in the same manner as other leave. Notwithstanding any statute or regulation to the contrary and ~~*[, with respect to employees of the State,]*~~ except as otherwise provided by regulation adopted pursuant to this section by the Personnel Commission, an employee *of the State* ~~*[or any other participating public employer]*~~ who is on furlough leave is considered to have worked that day or portion of a day, as applicable, for all purposes except payment of salary and determination of overtime, including without limitation:

(a) Accrual of sick and annual leave;

(b) Determining the employee's pay progression date;

(c) Continuity of service and years of service for the purposes of payments pursuant to the plan to encourage continuity of service;

(d) The duration of a probationary period;

(e) Determining eligibility for holiday pay if the shift immediately precedes a holiday;

(f) Seniority for all purposes, including layoffs;

(g) The Public Employees' Benefits Program; and

(h) The Public Employees' Retirement System, including for the purposes of contributions to the System, subject to the requirements of sections 4 and 5 of this act.

~~[5.]~~ *6.* The Board of Regents of the University of Nevada shall determine and implement the method by which:

(a) The professional employees of the Nevada System of Higher Education will participate in the furlough requirement pursuant to this section; or

(b) The overall costs for the professional employees of the Nevada System of Higher Education will be reduced in an amount at least equal to the savings which would have otherwise been produced by furlough leave pursuant to this section.

~~[6.]~~ *7.* Except as otherwise provided in subsection ~~[5,]~~ *6,* the Personnel Commission shall adopt regulations *which are applicable to employees of the State* to carry out the provisions of this section.

8. The provisions of subsection 4 do not apply to the extent that those provisions conflict with the provisions of a collective bargaining agreement entered into pursuant to chapter 288 of NRS.

9. The provisions of this section do not apply to a board, commission or agency the sole function of which is the regulation of a profession, occupation or business and which is not subject to the provisions of NRS 353.150 to 353.246, inclusive.

10. As used in this section, "public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 2. Section 4 of chapter 391, Statutes of Nevada 2009, at page 2160, is hereby amended to read as follows:

Sec. 4. 1. It is the intent of the Legislature to establish a program whereby employees of the State and other participating *public* employers ~~[who]~~ *:*

(a) Who take furlough leave due to extreme fiscal need ~~[, including employees required to take furlough leave pursuant to section 3 of this act,]~~ *; or*

(b) Whose salaries are reduced ~~[by 5.75 percent]~~ in lieu of furlough leave , ~~[pursuant to section 5 of this act or any other specific statute,]~~

➥ be held harmless in the accumulation of retirement service credit and reported salary pursuant to chapter 286 of NRS ~~[.]~~ *, except that, in the case of an employee of a school district, the school district shall determine whether the employee will be so held harmless.*

2. Except as otherwise required as a result of NRS 286.537 and notwithstanding the provisions of NRS 286.481, an employee is entitled to receive full service credit for time taken as furlough leave pursuant to the program established pursuant to section 3 of this act if:

(a) The employee *, if he is an employee of the State,* does not take more than ~~[96]~~ *120* hours of furlough leave ~~[in a year;]~~ *for the period beginning on July 1, 2010, and ending on June 30, 2011;* and

(b) The public employer certifies to the System that the employer is participating in the furlough program established pursuant to section 3 of this act and that the furlough leave which is reported for the employee is taken in accordance with the requirements of section 3 of this act.

3. In any month in which a day of furlough leave is taken, an employee is entitled to receive full-time service credit for the furlough leave in accordance with the normal workday for the employee. An employee who is less than full time is entitled to service credit in the same manner and to the same extent as though the employee had worked the hours taken as furlough leave.

4. *If the salary of any member is reduced ~~[by 5.75 percent]~~ in lieu of furlough leave , ~~[pursuant to section 5 of this act or any other specific statute,]~~ the public employer shall certify to the System that the salary of that member has been so reduced.*

5. When a member is on furlough leave pursuant to the program certified by the public employer in accordance with this section*, or when the salary of a member is reduced ~~[by 5.75 percent]~~ in lieu of furlough leave and certified by the public employer in accordance with this section,* the public employer must:

(a) Include all information required by the System on the public employer's regular monthly retirement report as provided in NRS 286.460; and

(b) Pay all required employer and employee contributions to the System based on the compensation that would have been paid to the member but for the member's participation in the program. The public employer may recover from the employee the amount of the employee contributions set forth in NRS 286.410.

~~[5.]~~ *6.* Service credit under the program established pursuant to this section must be computed according to the fiscal year.

~~[6.]~~ *7.* As used in this section:

(a) "Member" has the meaning ascribed to it in NRS 286.050.

(b) "Public employer" has the meaning ascribed to it in NRS 286.070.

(c) "System" means the Public Employees' Retirement System.

Sec. 3. Section 5 of chapter 391, Statutes of Nevada 2009, at page 2161, is hereby amended to read as follows:

Sec. 5. 1. It is the intent of the Legislature to limit exceptions to the requirement of furlough leave for employees of the State pursuant to section 3 of this act to identified areas of critical need. If ~~[an]~~ *a state* employer, ~~[including the State,]~~ ~~*[other than a local government employer,]*~~ participating in the program established pursuant to section 3 of this act determines that a position cannot be subject to furlough leave because of the need to provide appropriate services that are necessary to the protection of public health, safety and welfare, the governing body of the agency must make findings on the record in a public meeting that:

(a) The position is necessary to the protection of public health, safety, or welfare;

(b) The public health, safety or welfare will be significantly diminished if mandatory furlough leave is implemented for employees in these positions; *and*

(c) No alternatives exist to provide for the protection of public health, safety or welfare . ~~[; and~~

~~(d) The agency has identified and will implement other methods to reduce overall costs equal to the savings produced by furlough leave under the program or received an allocation of funds as set forth in section 8 of this act.]~~

2. For the purposes of subsection 1:

(a) Except as otherwise provided in this subsection, the State Board of Examiners shall determine positions within the Executive Branch of State Government that cannot be subject to furlough leave. ***Any such determination is not effective unless approved by the Interim Finance Committee.***

(b) The Board of Regents shall determine positions within the Nevada System of Higher Education that cannot be subject to furlough leave. ***Any such determination is not effective unless approved by the Interim Finance Committee.***

(c) The Public Employees' Retirement Board shall determine positions within the

Public Employees' Retirement System that cannot be subject to furlough leave.

(d) The Supreme Court shall determine positions within the Judicial Branch of State Government that cannot be subject to furlough leave.

(e) The Legislative Commission shall determine positions within the Legislative Branch of State Government that cannot be subject to furlough leave.

3. The entities described in subsection 2 shall report to the Interim Finance Committee on a quarterly basis all positions that have been determined not to be subject to furlough leave pursuant to this section and the reasons for such determinations.

4. The salary of any position that has been determined not to be subject to furlough leave pursuant to this section must be reduced by an amount of 5.75 percent in lieu of furlough leave ~~*[.]*~~ ***, except that the payment of any special or other adjustments to the base rate and any overtime that is worked by an employee who is filling such a position must be calculated based on the employee's unreduced salary.***

Sec. 4. *For the period beginning on July 1, 2010, and ending on June 30, 2011:*

1. The compensation of employees of the Senate and Assembly due pursuant to NRS 218A.605 must be reduced by 5.75 percent in lieu of furlough leave;

2. In calculating the amount of compensation due such an employee pursuant to NRS 218A.605, no additional step increase authorized by that section may be applied; and

3. If such an employee is a member of the Public Employees' Retirement System who is contributing to the System, the provisions of section 4 of chapter 391, Statutes of Nevada 2009, at page 2160, as amended by section 2 of this act, apply with respect to the employee.

Sec. 5. *1. Notwithstanding the provisions of NRS 281.110 or any other statute or regulation to the contrary, except as otherwise provided in this section and section 6 of this act, for the period beginning on July 1, 2010, and ending on June 30, 2011, the offices of all state officers, departments, boards, commissions and agencies must be closed on Fridays and be open for the transaction of business at least from 7 a.m. until 12 p.m. and from 1 p.m. until 6 p.m. on Monday through Thursday. The workweek of the employees of those offices must consist of four 10-hour days, Monday through Thursday.*

2. During any week in which falls one or more legal holidays pursuant to NRS 236.015, all such offices must 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. on each day which is not a legal holiday, and the workweek of the employees of those offices during that week must consist of 8-hour days. No furlough leave may be taken by an employee on any 8-hour day described in this subsection.

3. An office and its employees may be exempted from the requirements of this section upon a determination pursuant to subsection 4 that the office must remain open on Fridays because of the need to provide appropriate services that are necessary to the protection of public health, safety and welfare.

4. For the purposes of subsection 3:

(a) Except as otherwise provided in this subsection, the State Board of Examiners shall determine exemptions from the requirements of this section for offices within the Executive Branch of State Government.

(b) The Board of Regents shall determine exemptions from the requirements of this section for offices within the Nevada System of Higher Education.

(c) The Public Employees' Retirement Board shall determine exemptions from the requirements of this section for offices within the Public Employees' Retirement System.

(d) The Supreme Court shall determine exemptions from the requirements of this section for offices within the Judicial Branch of State Government.

(e) The Legislative Commission shall determine exemptions from the requirements of this section for offices within the Legislative Branch of State Government.

5. An entity described in subsection 4 shall report to the Interim Finance Committee not later than 60 days after determining that an office is exempt from the requirements of this section concerning the determination and the reasons for the determination.

6. Notwithstanding the provisions of section 3 of chapter 391, Statutes of Nevada 2009, at page 2159, as amended by section 1 of this act, to the contrary, an employee of an office that is exempted from the requirements of this section may take portions of a day as furlough leave that combine to total the amount of the furlough leave required by that section, except that any such employee described in NRS 284.148 shall take all required furlough leave each month during the same week.

7. If the last day limited by a specific statute for filing any paper with or complying with any deadline involving an office that is closed on a Friday pursuant to this section falls on that Friday, the period so limited must expire on the following business day at 5 p.m.

8. The provisions of this section do not apply to a board, commission or agency the sole function of which is the regulation of a profession, occupation or business and which is not subject to the provisions of NRS 353.150 to 353.246, inclusive.

Sec. 6. *For the period beginning on July 1, 2010, and ending on June 30, 2011* ~~[:~~

~~*1. The Department of Corrections shall establish a schedule consisting of two 12-hour shifts per day, Monday through Sunday, to be staffed by those employees who are employed in facilities that are required to provide 24-hour services. Upon a motion of the Committee or request of the Department of Corrections that has been approved by the Chief of the Budget Division of the Department of Administration, exceptions to this subsection may be granted by the Interim Finance Committee if the Committee determines that the exception is necessary to protect health and safety.*~~

~~*2. The]*~~ *, the Board of Regents shall establish a schedule consisting of rolling 10-hour days which is designed to allow staffing by employees of the Nevada System of Higher Education on Monday through Friday, with each employee working on only four of those days.*

Sec. 7. *For the period beginning on July 1, 2010, and ending on June 30, 2011, if any state agency determines that it will require its employees to work more overtime than the amount of overtime the state agency required of its employees during the preceding fiscal year or, if the overtime requirements of the state agency vary substantially during each year of a biennium, during the corresponding year of the preceding biennium, the additional overtime may only be worked pursuant to a plan that is approved in advance by one of the following entities:*

1. Except as otherwise provided in this ~~[subsection,]~~ section, the State Board of Examiners must approve overtime plans for the Executive Branch of State Government.

2. The Board of Regents must approve overtime plans for the Nevada System of Higher Education.

3. The Public Employees' Retirement Board must approve overtime plans for the Public Employees' Retirement System.

4. The Supreme Court must approve overtime plans for the Judicial Branch of State Government.

5. The Legislative Commission must approve overtime plans for the Legislative Branch of State Government.

Sec. 7.5. NRS 209.183 is hereby amended to read as follows:

209.183 In addition to his or her regular salary, each person employed *before March 1, 2010,* by the Department of Corrections or the Division of Forestry of the State Department of Conservation and Natural Resources at the Southern Nevada Correctional Center, the Southern Desert Correctional Center, the Indian Springs Conservation Camp, the correctional institution identified as the Men's Prison No. 7 in chapter 656, Statutes of Nevada 1995, and chapter 478, Statutes of Nevada 1997, or the Jean Conservation Camp is entitled to receive, as compensation for travel expenses, not more than $7.50 for each day he or she reports to work if his or her residence is more than 25 miles from the respective facility. The total cost for compensation for travel expenses authorized by this section must not exceed the amount specially appropriated for this purpose.

Sec. 8. [NRS 245.210 is hereby amended to read as follows:

245.210 1. The board of county commissioners of each of the several counties shall, by ordinance or agreement pursuant to chapter 288 of NRS, provide for annual, sick and disability leave for elected and appointed county officers and county employees. The provisions of such an ordinance or agreement may be more restrictive but not more extensive than the provisions set forth in this section.

2. The ordinance or agreement must include provisions in substance as follows:

(a) A provision that all elected and appointed officers and employees are entitled to annual leave with pay of ~~[1 1/4 working days]~~ ~~*10 hours*~~ for each month of service, which may be cumulative from year to year not to exceed ~~[30 working days.]~~ ~~*240 hours.*~~

(b) A provision that the board of county commissioners may by order provide for additional annual leave for long-term appointed officers and employees and for prorated annual leave for part-time employees.

(c) A provision that if an appointed officer or employee dies and was entitled to accumulated annual leave under the provisions of the ordinance, the heirs of the deceased officer or employee who are given priority to succeed to his or her assets under the laws of intestate succession of this State, or the executor or administrator of his or her estate, upon submitting satisfactory proof to the board of county commissioners of their entitlement, are entitled to be paid an amount of money equal to the number of days earned or accrued annual leave multiplied by the daily salary or wages of the deceased officer or employee.

(d) A provision that an elected county officer must not be paid for accumulated annual leave upon termination of the officer's service.

(e) A provision that during the first 6 months of employment of any appointed officer or employee, annual leave accrues as provided in paragraph (a), but annual leave must not be taken during this period.

(f) A provision that an appointed officer or employee must not be paid for accumulated annual leave upon termination of employment unless he or she has been employed for 6 months or more.

(g) A provision that all elected and appointed officers and employees are entitled to sick and disability leave with pay of ~~[1 1/4 working days]~~ ~~*10 hours*~~ for each month of service, which may be cumulative from year to year.

(h) A provision that the board of county commissioners may by order provide for additional sick and disability leave for long-term employees and for prorated sick and disability leave for part-time employees.

(i) A provision that any appointed officer or employee may be granted a leave of absence without pay.

3. Such an ordinance or agreement may include a provision that upon termination of employment, retirement or death all elected and appointed officers and employees are entitled to payment for their unused sick leave at their rate of salary at the time of termination, retirement or death.

4. Such an ordinance or agreement may include a provision that elected and appointed county officers and employees may donate portions of their accumulated annual and sick leave to other elected and appointed county officers and employees. If such a provision is adopted, donated time must be converted into money at the hourly rate of salary of the donor and the money must be converted into sick leave at the hourly rate of salary of the recipient.] *(Deleted by amendment.)*

Sec. 8.1. NRS 284.065 is hereby amended to read as follows:

284.065 1. The Commission has only such powers and duties as are authorized by law.

2. In addition to the powers and duties set forth elsewhere in this chapter, the Commission shall:

(a) Advise the Director concerning the organization and administration of the Department.

(b) Report to the Governor biennially on all matters which the Commission may deem pertinent to the Department and concerning any specific matters previously requested by the Governor.

(c) Advise and make recommendations to the Governor or the Legislature relative to the personnel policy of the State.

(d) ~~[Adopt]~~ *Except as otherwise provided in subsection 4 of NRS 284.175, adopt* regulations to carry out the provisions of this chapter.

(e) Foster the interest of institutions of learning and of civic, professional and employee organizations in the improvement of personnel standards in the state service.

(f) Review decisions of the Director in contested cases involving the classification or allocation of particular positions.

(g) Exercise any other advisory powers necessary or reasonably implied within the provisions and purposes of this chapter.

Sec. 8.3. NRS 284.155 is hereby amended to read as follows:

284.155 1. ~~[The]~~ *Except as otherwise provided in subsection 4 of NRS 284.175, the* Commission shall adopt a code of regulations for the classified service.

2. The code must include regulations concerning certifications and appointments for:

(a) Positions in classes having a maximum salary of $12,500 or less as of December 31, 1980, where the regular procedures for examination and certification are impracticable; and

(b) Classes where applicants for promotion are not normally available.

➥ These regulations may be different from the regulations concerning certifications and appointments for other positions in the classified service.

Sec. 8.5. NRS 284.175 is hereby amended to read as follows:

284.175 1. After consultation with appointing authorities and state fiscal officers, the Director shall prepare a pay plan for all employees in the classified service.

2. The pay plan and its amendments become effective only after approval by the Governor.

3. ~~[The]~~ *Except as otherwise provided in subsection 4, the* pay plan must include, without limitation, ranges for each class, grade or group of positions in the classified service. Each employee in the classified service must be paid at one of the rates set forth in the pay plan for the class of position in which the employee is employed and at such time as necessary money is made available for the payment.

4. *The pay plan may not include any special or other adjustments to the base rates set forth in the pay plan for employees hired on or after March 1, 2010.*

5. The Commission shall adopt regulations to carry out the pay plan.

~~[5.]~~ *6.* The Director may make recommendations to the Legislature during regular legislative sessions concerning salaries for the classified service of the State. In making such recommendations, the Director shall consider factors such as:

(a) Surveys of salaries of comparable jobs in government and private industry within the State of Nevada and western states, where appropriate;

(b) Changes in the cost of living;

(c) The rate of turnover and difficulty of recruitment for particular positions; and

(d) Maintaining an equitable relationship among classifications.

Sec. 9. NRS 284.180 is hereby amended to read as follows:

284.180 1. The Legislature declares that since uniform salary and wage rates and classifications are necessary for an effective and efficient personnel system, the pay plan must set the official rates applicable to all positions in the classified service, but the establishment of the pay plan in no way limits the authority of the Legislature relative to budgeted appropriations for salary and wage expenditures.

2. Credit for overtime work directed or approved by the head of an agency or the representative of the head of the agency must be earned at the rate of time and one-half, except for those employees described in NRS 284.148.

3. Except as otherwise provided in subsections 4, 6, 7 and 9, ~~*[8,]*~~ *:*

(a) During a workweek consisting of 10-hour days, overtime is considered time worked in excess of:

(1) Ten hours in 1 calendar day;

(2) Ten hours in any 18-hour period; or

(3) A 40-hour week.

(b) During a workweek consisting of 8-hour days, overtime is considered time worked in excess of *:*

~~[(a)]~~ *(1)* Eight hours in 1 calendar day;

~~[(b)]~~ *(2)* Eight hours in any 16-hour period; or

~~[(c)]~~ *(3)* A ~~*[a]*~~ 40-hour week.

4. Firefighters who choose and are approved for a 24-hour shift shall be deemed to work an average of 56 hours per week and 2,912 hours per year, regardless of the actual number of hours worked or on paid leave during any biweekly pay period. A firefighter so assigned is entitled to receive 1/26 of the firefighter’s annual salary for each biweekly pay period. In addition, overtime must be considered time worked in excess of:

(a) Twenty-four hours in one scheduled shift; or

(b) Fifty-three hours average per week during one work period for those hours worked or on paid leave.

➥ The appointing authority shall designate annually the length of the work period to be used in determining the work schedules for such firefighters. In addition to the regular amount paid such a firefighter for the deemed average of 56 hours per week, the firefighter is entitled to payment for the hours which comprise the difference between the 56-hour average and the overtime threshold of 53 hours average at a rate which will result in the equivalent of overtime payment for those hours.

5. The Commission shall adopt regulations to carry out the provisions of subsection 4.

6. ~~[For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week.]~~

Corrections Officers of the Department of Corrections must be scheduled to work not less than three consecutive 12-hour shifts and not less than seven 12-hour shifts during each 14-day pay period. Overtime must be considered time worked in excess of:

(a) Twelve hours in one shift; or

(b) Eighty-four hours in any 14-day pay period.

7. Employees who are eligible under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., to work a variable ~~[80-hour]~~ work schedule within a biweekly pay period ~~[and who choose and are approved for such a work schedule]~~ will be considered eligible for overtime ~~[only after working 80 hours biweekly .]~~ ~~[, except those eligible employees who are approved for overtime in excess of one scheduled shift of 8 or more hours per day.]~~ *in accordance with the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.*

8. ~~*[7.]*~~ An agency may experiment with innovative workweeks upon the approval of the head of the agency and after majority consent of the affected employees. The affected employees are eligible for overtime only after working 40 hours in a workweek.

9. ~~*[8.]*~~ This section does not supersede or conflict with existing contracts of employment for employees hired to work 24 hours a day in a home setting. Any future classification in which an employee will be required to work 24 hours a day in a home setting must be approved in advance by the Commission.

10. ~~*[9.]*~~ All overtime must be approved in advance by the appointing authority or the designee of the appointing authority. No officer or employee, other than a director of a department or the chair of a board, commission or similar body, may authorize overtime for himself or herself. The chair of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body.

11. ~~*[10.]*~~ The Budget Division of the Department of Administration shall review all overtime worked by employees of the Executive Department to ensure that overtime is held to a minimum. The Budget Division shall report quarterly to the State Board of Examiners the amount of overtime worked in the quarter within the various agencies of the State.

Sec. 10. NRS 284.350 is hereby amended to read as follows:

284.350 1. Except as otherwise provided in subsections 2, 3 and 4, an employee in the public service, whether in the classified or unclassified service, is entitled to annual leave with pay of ~~[1 1/4 working days]~~ *10 hours* for each month of continuous public service. The annual leave may be cumulative from year to year not to exceed ~~[30 working days.]~~ *240 hours.* The Commission may by regulation provide for additional annual leave for long-term employees and for prorated annual leave for part-time employees.

2. Except as otherwise provided in this subsection, any annual leave in excess of ~~[30 working days]~~ *240 hours* must be used before January 1 of the year following the year in which the annual leave in excess of

~~[30 working days]~~ *240 hours* is accumulated or the amount of annual leave in excess of ~~[30 working days]~~ *240 hours* is forfeited on that date. If an employee:

(a) On or before October 15, requests permission to take annual leave; and

(b) The employee's request for leave is denied in writing for any reason,

➥ the employee is entitled to payment for any annual leave in excess of ~~[30 working days]~~ *240 hours* which the employee requested to take and which the employee would otherwise forfeit as the result of the denial of the employee's request, unless the employee has final authority to approve use of the employee's own accrued leave and the employee received payment pursuant to this subsection for any unused annual leave in excess of ~~[30 working days]~~ *240 hours* accumulated during the immediately preceding calendar year. The payment for the employee's unused annual leave must be made to the employee not later than January 31.

3. Officers and members of the faculty of the Nevada System of Higher Education are entitled to annual leave as provided by the regulations adopted pursuant to subsection 2 of NRS 284.345.

4. The Commission shall establish by regulation a schedule for the accrual of annual leave for employees who regularly work more than 40 hours per week or 80 hours biweekly. The schedule must provide for the accrual of annual leave at the same rate proportionately as employees who work a 40-hour week accrue annual leave.

5. No elected state officer may be paid for accumulated annual leave upon termination of the officer's service.

6. During the first 6 months of employment of any employee in the public service, annual leave accrues as provided in subsection 1, but no annual leave may be taken during that period.

7. No employee in the public service may be paid for accumulated annual leave upon termination of employment unless the employee has been employed for 6 months or more.

8. Upon the request of an employee, the appointing authority of the employee may approve the reduction or satisfaction of an overpayment of the salary of the employee that was not obtained by the fraud or willful misrepresentation of the employee with a corresponding amount of the accrued annual leave of the employee.

Sec. 11. NRS 284.355 is hereby amended to read as follows:

284.355 1. Except as otherwise provided in this section, all employees in the public service, whether in the classified or unclassified service, are entitled to sick and disability leave with pay of ~~[1 1/4 working days]~~ *10 hours* for each month of service, which may be cumulative from year to year. After an employee has accumulated ~~[90 working days]~~ *720 hours* of sick leave, the amount of additional unused sick leave which the employee is entitled to carry forward from 1 year to the next is limited to one-half of the unused sick leave accrued during that year, but the Commission may by regulation provide for subsequent use of unused sick leave accrued but not carried forward because of this limitation in cases where the employee is suffering from a long-term or chronic illness and has used all sick leave otherwise available to the employee.

2. Upon the retirement of an employee, the employee's termination through no fault of the employee or the employee's death while in public employment, the employee or the employee's beneficiaries are entitled to payment:

(a) For the employee's unused sick leave in excess of ~~[30 days,]~~ *240 hours,* exclusive of any unused sick leave accrued but not carried forward, according to the employee's number of years of public service, except service with a political subdivision of the State, as follows:

(1) For 10 years of service or more but less than 15 years, not more than $2,500.

(2) For 15 years of service or more but less than 20 years, not more than $4,000.

(3) For 20 years of service or more but less than 25 years, not more than $6,000.

(4) For 25 years of service, not more than $8,000.

(b) For the employee's unused sick leave accrued but not carried forward, an amount equal to one-half of the sum of:

(1) The employee's hours of unused sick leave accrued but not carried forward; and

(2) An additional 120 hours.

3. The Commission may by regulation provide for additional sick and disability leave for long-term employees and for prorated sick and disability leave for part-time employees.

4. An employee entitled to payment for unused sick leave pursuant to subsection 2 may elect to receive the payment in any one or more of the following forms:

(a) A lump-sum payment.

(b) An advanced payment of the premiums or contributions for insurance coverage for which the employee is otherwise eligible pursuant to chapter 287 of NRS. If the insurance coverage is terminated and the money advanced for premiums or contributions pursuant to this subsection exceeds the amount which is payable for premiums or contributions for the period for which the former employee was actually covered, the unused portion of the advanced payment must be paid promptly to the former employee or, if the employee is deceased, to the employee's beneficiary.

(c) The purchase of additional retirement credit, if the employee is otherwise eligible pursuant to chapter 286 of NRS.

5. Officers and members of the faculty of the Nevada System of Higher Education are entitled to sick and disability leave as provided by the regulations adopted pursuant to subsection 2 of NRS 284.345.

6. The Commission may by regulation provide policies concerning employees with mental or emotional disorders which:

(a) Use a liberal approach to the granting of sick leave or leave without pay to such an employee if it is necessary for the employee to be absent for treatment or temporary hospitalization.

(b) Provide for the retention of the job of such an employee for a reasonable period of absence, and if an extended absence necessitates separation or retirement, provide for the reemployment of such an employee if at all possible after recovery.

(c) Protect employee benefits, including, without limitation, retirement, life insurance and health benefits.

7. The Commission shall establish by regulation a schedule for the accrual of sick leave for employees who regularly work more than 40 hours per week or 80 hours biweekly. The schedule must provide for the accrual of sick leave at the same rate proportionately as employees who work a 40-hour week accrue sick leave.

8. The Department may investigate any instance in which it believes that an employee has taken sick or disability leave to which the employee was not entitled. If, after notice to the employee and a hearing, the Commission determines that the employee has taken sick or disability leave to which the employee was not entitled, the Commission may order the forfeiture of all or part of the employee's accrued sick leave.

Sec. 12. Any use of the term "working day" in a regulation of the Personnel Commission which concerns the earning, calculation or use of annual leave or sick leave must be interpreted to mean a period of work consisting of 8 hours until that regulation is otherwise amended by the Personnel Commission.

Sec. 13. 1. Each exemption from furlough leave which was granted on or before June 30, 2010, is hereby declared void.

2. The provisions of subsection 1 do not preclude the reapplication for and granting of any exemption that is declared void by subsection 1.

Sec. 13.5. 1. Notwithstanding any contrary order, directive, policy or request made by any other officer or agency of the Executive Department of the State Government, the Department of Personnel or other responsible officer or agency shall administer, carry out and make payments pursuant to NRS 209.183 and NAC 284.206, 284.208, 284.210, 284.214 and 284.218, as those provisions existed on February 23, 2010, to any employee as defined in this section who:

(a) Was receiving such payments on February 23, 2010, in accordance with the provisions of those statutes and regulations; or

(b) Becomes eligible to receive such payments on or after February 23, 2010, in accordance with the provisions of those statutes and regulations.

2. This section does not:

(a) Make any employee eligible to receive such payments if the employee does not otherwise meet the criteria to receive such payments in accordance with the provisions of those statutes and regulations.

(b) Prohibit the Department of Personnel from stopping such payments to any employee when the employee no longer meets the criteria to receive such payments in accordance with the provisions of those statutes and regulations.

3. As used in this section, "employee" means a person who:

(a) Is employed by the Executive Department of the State Government on February 23, 2010; or

(b) Was employed by the Executive Department of the State Government on or before February 23, 2010, and who returns to employment with the Executive Department of the State Government on or after that date.

4. The term "employee" does not include any person who is employed by the Executive Department of the State Government for the first time after February 23, 2010.

Sec. 14. 1. This *section and sections 7.5, 8.1, 8.3, 8.5 and 13.5 of this act become effective upon passage and approval.*

2. Sections 1 to 7, inclusive, 8, 9 to 12, inclusive, and 13 of this act ~~[becomes]~~ *become* effective on July 1, 2010.

~~[2.]~~ *3.* Sections 1 to 7, inclusive, ~~[11]~~ *12* and ~~[12]~~ *13* of this act, and sections 3, 4 and 5 of chapter 391, Statutes of Nevada 2009, expire by limitation on June 30, 2011.

Senator Care moved the adoption of the amendment.

Amendment adopted.

Senator Horsford moved that all necessary rules be suspended, that the reprinting of Senate Bill No. 3 be dispensed with, and that the Secretary be authorized to insert the Amendment No. 5 adopted by the Senate, and the bill be immediately placed on the General File for final passage.

Motion carried.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 7:20 p.m.

SENATE IN SESSION

At 7:29 p.m.

President Krolicki presiding.

Quorum present.

GENERAL FILE AND THIRD READING

Senate Bill No. 3.

Bill read third time.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 7:20 p.m.

SENATE IN SESSION

At 7:29: p.m.
President Krolicki presiding.
Quorum present.

Senator Care requested that the following legal opinion be entered in the Journal.

You have asked whether section 13.5 of Amendment No. 5 to Senate Bill No. 3 violates the separation-of-powers doctrine.

Section 13.5 requires the Department of Personnel to administer, carry out and make payments to certain state employees pursuant to NRS 209.183 and NAC 284.206, 284.208, 284.210, 284.214 and 284.218, notwithstanding any contrary order, directive, policy or request made by any other officer or agency of the Executive Department of the State Government. Thus, section 13.5 requires the Department to perform its existing statutory and regulatory functions even if the Governor or another executive officer or agency commands the Department to stop performing those its existing statutory and regulatory functions.

Based on well-established legal principles, section 13.5 does not violate the separation-of-powers doctrine because the Governor or another executive officer or agency does not have the power to stop the Department from performing its existing statutory and regulatory functions, unless the Legislature expressly grants such power to the Governor or another officer or agency. Section 13.5 makes it clear that the Legislature has not granted such power to the Governor or another executive officer or agency.

Thus, section 13.5 does not violate the separation-of-powers doctrine. To the contrary, section 13.5 ensures that the executive branch is dutifully performing its statutory and regulatory functions in a manner that comports with the separation-of-powers doctrine.

As a general rule, the Governor has no inherent or prerogative powers which arise merely by virtue of the office, but the Governor possesses only those express and limited powers which are granted to the Governor by the state constitution or by statute. See Litchfield Elementary Sch. Dist. No. 79 v. Babbitt, 608 P.2d 792, 797 (Ariz. Ct. App. 1980); 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).

Furthermore, the Governor may not, by executive order, direct a state officer to perform an act unless the executive order falls within the authority granted to the Governor by the state constitution or by statute. See 81A C.J.S. States § 242 (2004). As explained by the United States Supreme Court in the context of an executive order issued by the President of the United States, "[t]he President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952); 91 C.J.S. United States § 48 (2000). Thus, "in the absence of a constitutional or statutory grant of authority from the Legislature, the Governor cannot create obligations, responsibilities, conditions or processes having the force and effect of law merely by issuing an executive order." Fischer-McReynolds v. Quasim, 6 P.3d 30, 36-37 (Wash. Ct. App. 2000); Werner v. Zazyczny, 681 A.2d 1331, 1336 (Pa. 1996).

In applying these general rules to specific executive orders, courts have found that an executive order which requires a state agency to act contrary to specific statutory mandates is invalid. See County Comm'n v. Dodrill, 385 S.E.2d 248, 250 (W. Va. 1989); State ex rel. Dodrill v. Scott, 352 S.E.2d 741, 744-45 (W. Va. 1986); Opinion of the Justices, 392 A.2d 125, 129 (N.H. 1978). Courts have also found that the Governor may not suspend the operation of statutes through an executive order unless the Governor has been granted constitutional or statutory authority to order such a suspension. See Mass. Bay Transp. Auth. Advisory Bd. v. Mass. Bay Transp. Auth., 417 N.E.2d 7, 13 (Mass. 1981). As explained by one court, "[t]he suspension of statutes by a Governor is also antithetical to the constitutional duty to 'take care that the laws be faithfully executed.'" Fletcher v. Commonwealth, 163 S.W.3d 852, 872 (Ky. 2005). Therefore, as a general rule, the Governor's unauthorized suspension of a statute through an executive order is void from its inception and will not be enforced by the courts. See Baker v. Fletcher, 204 S.W.3d 589, 593 (Ky. 2006).

Even though Article 5, Section 1 of the Nevada Constitution vests the "supreme executive power" in the Governor, that "supreme executive power" does not include the power to disregard acts of the Legislature. State of Nev. Employees Ass'n v. Daines, 108 Nev. 15, 20-21 (1992). As a result, "[e]xcept where there is a constitutional mandate or limitation, the Legislature may state which actions the executive shall or shall not perform." Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Because statutory powers and duties are created by the Legislature, it is within the province of the Legislature to determine which state agency will carry out those statutory powers and duties and in what manner. See 16A Am. Jur. 2d Constitutional Law § 288 (2009). Thus, when the Legislature empowers a state agency to perform a particular function, the Governor may not take away the agency's power to perform that particular function or order the agency to stop performing that particular function, unless the Legislature has given the Governor the authority to do so. See Brown v. Barkley, 628 S.W.2d 616, 623 (Ky. 1982) ("[W]hen the General Assembly has placed a function, power or duty in one place there is no authority in the Governor to move it elsewhere unless the General Assembly gives him that authority."); Kendall v. United States, 37 U.S. 524, 613 (1838) ("To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible."); 77 Am. Jur. 2d United States § 20 (2006). As explained by the United States Supreme Court in the context of the President of the United States:

> The executive power is vested in a President; and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power. But it by no means follows, that every officer in every branch of that department is under the exclusive direction of the President. Such a principle, we apprehend, is not, and certainly cannot be claimed by the President.
>
> There are certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the constitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President.

Kendall v. United States, 37 U.S. 524, 610 (1838).

Based on the foregoing principles, the Governor or another executive officer or agency does not have the power to stop the Department of Personnel from performing its existing statutory and regulatory functions, unless the Legislature expressly grants such power to the Governor or another officer or agency. Section 13.5 makes it clear that the Legislature has not granted such power to the Governor or another executive officer or agency.

Thus, section 13.5 does not violate the separation-of-powers doctrine. To the contrary, section 13.5 ensures that the executive branch is dutifully performing its statutory and regulatory functions in a manner that comports with the separation-of-powers doctrine.

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

SENATOR CARLTON:

I rise with concerns in opposition. In having children, you always want better for them. I have seen a disturbing trend in eliminating benefits that current employees have and future employees will not have. I stand to protect what we have and not to take away from it. This is wrong. There was a fervor about the 5-percent cut. We were all upset; it needed to be fixed. But never would I have thought we would sacrifice future employees to save current employees on this issue. If we needed to do something with the sunset provision, that would have been totally appropriate.

I am disappointed that we are balancing our present on the future. This is wrong. I want my children to do better; my parents wanted me to do better; my grandparents struggled so my parents could do better. For employee organizations to draw a line in the sand and protect their current members and leave future members behind is a sad day in Nevada.

I have always been very proud to be a union member. My grandfather was a Teamster; I grew up with it, and it has done very well by my family. But while times can be tough, I do not think they can ever be bad enough to sacrifice our next generation. We should be figuring out a way to solve the problem and not sacrificing our children.

Roll call on Senate Bill No. 3:
YEAS—19.
NAYS—Carlton, Coffin—2.

Senate Bill No. 3 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 7:33 p.m.

SENATE IN SESSION

At 8:55: p.m.
President Krolicki presiding.
Quorum present.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Care, the privilege of the floor of the Senate Chamber for this day was extended to Ashton Rasner.

On request of Senator Lee, the privilege of the floor of the Senate Chamber for this day was extended to the following group of cheerleaders from the Legacy High School, Las Vegas: Rebecca Burrell, Tiana Jones, Alexis Weaver, Jenna Murray, Niki Ramsy, Samantha Conte, Merissa, Mendoza, McKenzee Christenson, Hannah Saiz, .Nicole Garan, Breanna Alexander, Ashley Brun-Webb, Candace Guantero, Kiyanti Durr, Kiera Fisher and Arbrehanna Jacobs.

Senator Care moved that the Senate adjourn until Saturday, February 27, 2010, at 10 a.m.

Motion carried.

Senate adjourned at 8:55 p.m.

Approved: BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

UNION LABEL