NEVADA LEGISLATURE

Twenty-sixth Special Session, 2010

SENATE DAILY JOURNAL

THE SIXTH DAY

CARSON CITY (Sunday), February 28, 2010

Senate called to order at 11:22 a.m.
President Krolicki presiding.
Roll called.
All present.
Prayer by the Chaplain, Pastor Albert Tilstra.

Eternal Father, in this moment of prayer, when there is silence in this Chamber, may there not be silence in Your presence. May our prayers be heard.

May no short circuits be made by our lack of faith, our high professions jointed to low attainment, our fine words hiding shabby thoughts or friendly faces masking cold hearts.

Out of the same old needs, conscious of the same old faults, we pray on the same old terms for new mercies and new blessings.

We pray to the One who has always given us assurance that You will hear and answer our prayers.

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.

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

Senate in recess at 11:26 a.m.

SENATE IN SESSION

At 7:48 p.m.
President Krolicki presiding.
Quorum present.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 28, 2010

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 4.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 2.

LUCINDA BENJAMIN
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the following persons be accepted as accredited press representatives and that they be assigned space at the press table and allowed the use of appropriate media facilities: KTVN-TV: Bradley William Horn and THE NEVADA SAGEBRUSH: Emerson Marcus.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 2.

Senator Horsford moved that the bill be referred to the Committee of the Whole.

Motion carried.

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 Care 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 7:50 p.m.

IN COMMITTEE OF THE WHOLE

At 7:52 p.m.

Senator Horsford presiding.

State's budget shortfall considered.

The Committee of the Whole was addressed by Senator Horsford; John Slaughter, Director of Management Services, Washoe County; Senator Raggio; Senator Coffin; Constance Brooks, Clark County; and Senator Carlton.

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

SENATOR HORSFORD:

We will open the hearing on Assembly Bill No. 2 authorizing deviation from the required hours of operation for county offices under certain circumstances.

JOHN SLAUGHTER (Director of Management Services, Washoe County):

Assembly Bill No. 2 started out as an administration bill that originally included state offices, but because of another piece of legislation, those were taken out. It now includes only county offices. Basically, what the bill does is allow constitutional officers of the county: sheriff, district attorney, county clerk and others, to propose to our county commissions changes to their office hours. The county commissions would approve that plan and, in doing that, would have to find that there are savings or that it is cost neutral to the county. For Washoe County, specifically what we are interested in is the Office of the County Clerk and the Marriage License Bureau, where they could establish hours. Currently, they are required to be open from 8 a.m. to midnight, 365 days a year. They do find themselves at times when there is no business. This would allow them to set those hours to a different schedule.

We have been in conversation with the wedding chapels. They are in agreement with the way the process works in the bill, in that the board would hear from our county clerk what those hours would be and would come to an agreement.

SENATOR RAGGIO:

What were the amendments that resulted in the present version of Assembly Bill No. 2?

MR. SLAUGHTER:

The original bill included a definition of an extreme fiscal emergency, which would be the only time that we could do this. That caused us some concern on a number of levels. One is making the declaration that we have an extreme fiscal emergency. In place of that, the bill states that we must find that it is fiscally neutral or results in cost savings.

SENATOR RAGGIO:

It essentially removed section 1 that was in the original bill. Is that correct?

MR. SLAUGHTER:

I have a copy of the reprinted bill. As I recall, that was the section.

SENATOR RAGGIO:

That appears to be it. I just want to be sure we are all on the same page. Thank you.

SENATOR COFFIN:

I am curious as to why, in case there was a good opportunity or reason why you would change the hours, you would have to prove that you might be able to save some money? Frequently, you might have to spend a little more money and would be prohibited under the strict reading of this, unless we provide a definition of "fiscally neutral." It seems like gilding the lily to add that last sentence in each one of these paragraphs. Is there a comment as to why that is there?

MR. SLAUGHTER:

I am not sure. We were concerned about having to declare a "fiscal emergency" and some of the implications that would have. The language you see before you was prepared and presented by a subcommittee from the Assembly without a lot of input from the counties.

SENATOR HORSFORD:

Perhaps we could ask Ms. Brooks from Clark County or one of the other representatives from Nevada Association of Counties.

CONSTANCE BROOKS (Clark County):

Senator Coffin, could you repeat the question?

SENATOR COFFIN:

The question was why the last sentence in each operative paragraph states it "must be fiscally neutral or result in cost savings"? It seems like you should be able to run your own shop if you had a reason to change the hours. I cannot figure out why that is in there.

MS. BROOKS:

My understanding was that language was provided in exchange for the definition of "fiscal emergency." It was to allow for the board of county commissioners to have a bit more authority as it relates to the decision-making for the hours of the offices. Assemblywoman Kirkpatrick offered the language originally, and we agreed that it was best suited for us.

SENATOR CARLTON:

I am concerned about layoffs when I read that language. If this is to allow you to operate without as much overtime, I can understand that; overtime is very expensive. But I am hoping that there will not be any more layoffs. We do not need any more people losing jobs. Could you tell us about that?

MS. BROOKS:

At this time, we are examining our fiscal operations. As a result, unfortunately, we will have layoffs. But it is not our intention that this bill would result in layoffs. It really is to allow for the office to have the discretion to present a plan whereby the board of county commissioners would then be able to give approval. The goal is to allow for more efficiency in operations, not to support layoffs.

SENATOR CARLTON:

I assume "operations" means payroll.

SENATOR HORSFORD:

This is not one of those things that we should be dealing with. I do not see why you cannot be allowed to set your own hours or days.

SENATOR RAGGIO:

AS I understand it, the bill will allow the county commissioners flexibility if they decide to close their offices. Otherwise, it is presently directed in State law. Section 5 of the bill will sunset this authority at the end of this biennium.

Senator Raggio moved to do pass Assembly Bill No. 2.

Senator Schneider seconded the motion.

The motion carried. Senators Carlton and Coffin voted no.

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

SENATE IN SESSION

At 8:04 p.m.

President Krolicki presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President:

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

STEVEN A. HORSFORD, *Chair*

GENERAL FILE AND THIRD READING

Assembly Bill No. 2.

Bill read third time.

Roll call on Assembly Bill No. 2:

YEAS—20.

NAYS—None.

NOT VOTING—Coffin.

Assembly Bill No. 2 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

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 8:09 p.m.

IN COMMITTEE OF THE WHOLE

At 9:37 p.m.

Senator Horsford presiding.

State's budget shortfall considered.

The Committee of the Whole was addressed by Senator Horsford; Mark Krmpotic, Senate Fiscal Analyst; Senator Coffin; Senator Care; Senator Townsend; Brenda Erdoes, Legislative Counsel; Senator Carlton; Senator Lee; Senator Washington; Senator Nolan; Senator Rhoads, Senator Raggio; Assemblyman Kelvin Atkinson; Senator McGinness; Senator Amodei; Steve Holloway, Associated General Contractors, Southern Nevada; John Madole, Associated General Contractors, Reno; Bryan Gresh, Regional Transportation Committee, Southern Nevada; Patrick Sanderson, Laborers' International Union, Local No. 872; Veronica Meter, Las Vegas Chamber of Commerce; Chris Ferrari, Nevada Contractors' Association; Russell Rowe, American Council of Engineering Companies of Nevada; Randy Soltero, Sheet Metal Workers' Local Union, Local 88; Eileen O'Grady, Chief Deputy Legislative Counsel; Senator Cegavske and Senator Parks.

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

SENATOR HORSFORD:

We are going to consider BDR 31-43, which reduces state expenditures, increases certain fees and makes various other changes relating to the funding of state and local government. Mark Krmpotic, Senate Fiscal Analyst, will take us through the major provisions as well as the spreadsheets that have been provided to the Committee. We will have Legal Counsel available to answer any questions.

We are considering both bill drafts in both Chambers, concurrently, so that we can speed up the process and have the same BDR heard in both Chambers.

MARK KRMPOTIC (Senate Fiscal Analyst):

I am going to be referring to two documents to explain this BDR further.

Section 1 of the BDR includes a number of reductions to various agencies of state government. Section 1 goes from pages 9 through 20.

Last week, in the Committee of the Whole, Mr. Clinger provided the members a document that showed the so-called 10-percent reductions to various agencies throughout state government that were recommended by the Governor. Section 1 of the BDR represents those reductions that can be found on that sheet that was provided last week, less some restorations that will be noted.

Reductions in section 1 total $274,937,041 over the biennium. That amount has been adjusted for the restorations that are added back to the budget for HHS, totaling $25,118,215. Also included in section 1 are restorations of $1,842,082 to the Prevention/Treatment of Problem Gambling; $660,890 to the Equal Rights Commission; $12,817,386 to the Nevada State Prison, in other words keeping that facility open the remainder of the biennium; $6,452,226 to restore the Permanent Corrections Pay Differential Uniform Allowance; and $491,737 to restore five positions within the Water Resource Reductions.

It also includes the restoration of $423,311 to Cultural Affairs, which includes the restoration of 4 positions, the bookmobile and funding to obtain federal grants; $95,072 to the Judicial Discipline Commission; and $60,663 to Consumer Health Assistance. Additionally, section 1 of the bill also includes the restoration of $20,710,083 to the System of Higher Education, making their net reduction $66,806,719, or 6.9 percent.

Section 1 also includes reduction of the Office of State Treasurer by $163,090; reduction to the Office of the Controller by $544,864; reduction of the Legislative Counsel Bureau by $3,942,807 and the corresponding restoration of $734,916 to cover the cost of this Special Session; the projected caseload savings for the Nevada Check Up Program of $6,173,518; and the Salary Adjustment Account Reversions of $8,089,065. Those are the primary items that are included in section 1 of the BDR by agency.

If there are no questions, I will move on to section 2 of the BDR. Section 2 begins on page 21 and includes reductions to agency budgets recommended by the Governor associated with the elimination of vacant positions that were not identified in the 10-percent reductions under section 1. This results in a savings of $5,978,645.

Section 3 of the BDR starts at the bottom of page 23 and covers reductions associated with travel/training expenses. The Governor recently issued an order to state agencies that has frozen positions for hire beginning March 1 and has asked agencies to identify additional training and travel reductions to agency budgets and to reduce those accordingly. This can be found in section 3 of the BDR beginning on page 23, and the dollar amounts start on page 24 for a total savings of $1,317,776.

SENATOR COFFIN:

Are we going to have a hearing on this bill after the committee introduction, if we decide to introduce this?

SENATOR HORSFORD:

This is a review of the bill draft. They are going to start the bill in the Assembly, and then when it comes over here, formally, we will have further discussion on the bill before we take action.

MR. KRMPOTIC:
I will move on to section 4 of the bill beginning on page 27.

SENATOR HORSFORD:
I have a question on section 3. What percentage are the reductions for travel and training expenses? Is there a general percentage, or is it by department?

MR. KRMPOTIC:
This is identified by department and is not necessarily associated with a certain percentage. In some cases, agencies have zeroed out their travel and training budget for the biennium or have reduced it to nominal levels based on mission-critical needs.

Beginning on section 4, on page 27 are other reductions, totaling $6,279,792. There are a couple of examples of those items, including reductions to the School Support Teams. A portion of that is also included in the 10-percent reductions as well.

Section 5 of the BDR on page 29 reflects the reduction of the Supreme Court of $1,055,640. The Supreme Court has been provided some flexibility in section 5 to make that reduction in either year of the biennium. In other sections of the bill, the reductions are identified by fiscal year.

It should be noted that this BDR includes reductions to expenditures and appropriations as well as certain fees that would be increased through changes in regulation or changes in statute.

Section 6 provides for reduction of certain facilities in the Department of Cultural Affairs starting at the top of page 30 and also the Division of State Parks. These reductions are based on anticipated increases in fees that these agencies will be imposing beginning July 1. The action taken here is to reduce the General Fund appropriation with corresponding increases in fees by like amounts to fund those agencies over the next fiscal year.

Section 7 provides for reductions to the Gaming Control Board and the Nevada Gaming Commission. This includes restoration of $2,779,245 to the Gaming Control Board. The Governor's original recommendation was to reduce the Board by 31 positions, and the BDR would restore 24 of those positions.

SENATOR HORSFORD:
Is that 24 out of 31 positions?

MR. KRMPOTIC:
That is correct. Subsection 2 of section 7 reduces the Gaming Control Board. The Gaming Control Board is proposing to increase investigation fees from $80 per hour to $135 per hour. This will generate $4,236,650. The action here is to reduce the General Fund money going into the Gaming Control Board and increase in fees.

Section 8, subsection 1, paragraphs (a) and (b) provide the authorization for the Board to collect those fees. The amounts are $415,512 in the first year and $4,286,031 in the second year; those reflect both a projected increase in fees the Gaming Control Board already collects and the increase just noted in FY 2011.

SENATOR HORSFORD:
The fees will be done by regulation, and they will come before the Legislative Commission for review. Is that correct?

MR. KRMPOTIC:
I believe that is correct. There are no statutory provisions included in the BDR, so I believe it is covered by the NAC. Subsection 2 merely requires the Gaming Control Board to comply with NRS 353, State Financial Administration, with respect to the authorizations.

Section 9 authorizes the Department of Cultural Affairs and the Division of State Parks to receive the increased fees. These correspond to the reduction and appropriations that I noted in section 6.

SENATOR HORSFORD:

Is there an estimate on what the increase in State Park fees will be?

MR. KRMPOTIC:

The estimate included in this BDR is $1,086,000. It has been indicated that this is a very conservative estimate. It is based on approximately $1 to $2 increases in entrance fees in each of the State Parks as well as the increase in the wedding fee at the Valley of Fire and other assorted fees associated with the State Parks.

Section 11 reflects the transfer of appropriations associated with moving ARRA funds from one year to the other. Subsection 1 decreases the appropriation to higher education the first year by $92,389,311 and increases that appropriation in the second year of the biennium by the same amount. In subsection 2, the corresponding changes in the authorized federal revenues are noted on that page reflecting the transfer of the ARRA dollars.

Section 12 reflects the transfer of appropriations in corresponding ARRA dollars for the Department of Corrections totaling $72,178,069.

Section 14 reflects reductions in CIP projects of $2,141,638. This was fairly new information that came from the Budget Division.

SENATOR HORSFORD:

The ARRA money under higher education is not clearly identified as to how it gets expended. Section 11, subsection 3, states that the Board of Regents, with the approval of the Interim Finance Committee (IFC), will determine the expenditures. Sections 12 and 13, which have to do with the Department of Corrections, is more detailed. Was there some reason for that? How can that $92 million for higher education be used?

MR. KRMPOTIC:

The $92 million for higher education is identified with certain institutional budgets within the System of Higher Education. One of the reasons this transfer is not identified by institution is that for the System of Higher Education to utilize those ARRA dollars for the remaining portion of this fiscal year, they have to spread them to other budgets. I believe that includes the Research Budgets, the Desert Research Facility, the Desert Research Institute and other budgets that previously did not have ARRA funds authorized. This gives the system flexibility to spread the ARRA dollars to other accounts to be able to apply those to the remaining General Funds this fiscal year.

Sections 14, 15 and 16 correspond with the CIP reversions.

Section 18 on page 39 identifies a transfer of $62 million from the Clean Water Coalition in Clark County. Subsection 2 allows for the transfer of existing securities on March 12 to the State to address the budget shortfall. My understanding is that this transfer is allowed because this project these funds were directed to is not going forward in Clark County. The project has to do with the treatment of wastewater in some manner in southern Nevada.

Section 19 begins a section on increased fees. This starts with the Supreme Court and the foreclosure mediation process. I will get to the actual fee increase later in the bill. For your information, the foreclosure mediation increase totals $13.8 million.

SENATOR CARE:

Section 19, subsection 2, refers to "a small business whose commercial property is in default." I am trying to figure out who that is. I would not disagree that a barbershop is a small business, but arguably, a business with 500 or 1,000 employees could also be called a small business. I am unaware of a statutory definition of a small business. I do not know who is intended to be captured here. Also, my experience is that rarely does a small business own the commercial property upon which it is located. My guess is it is that situation that is intended to go to here, not the small business that is a tenant in real or commercial property owned by some other entity. Is this supposed to apply to the commercial property owner who leases out the property to small businesses but does not have a small business located upon the premises? We need to get some clarification on that.

SENATOR TOWNSEND:

I would also recommend we get an answer to the following question. In the case of a small business that is a tenant of a piece of real property that goes into foreclosure, does this proposed language give the small business standing in the foreclosure proceedings even if they are a tenant?

MR. KRMPOTIC:

These questions are probably better answered by the Legal staff. The intent of this language was to include commercial businesses in the foreclosure mediation process. I would ask Legal staff to respond to the other questions regarding the commercial property aspect of small business and also the question by Senator Townsend.

BRENDA ERDOES (Legislative Counsel):

Senator Townsend, I believe the answer to your question is no. This is for the owner of that property.

SENATOR CARE:

I had a couple of questions as well. Do we need a statutory definition of a small business? Is that based upon, for instance, gross proceeds or the number of employees? Some people would consider a business with 1,000 employees to be a small business, and others may not. Also, who is section 19, subsection 2, directed at? What I think is intended here is a small business owner who also owns the commercial property upon which the small business is located. But that is rarely the case, in my experience.

MRS. ERDOES:

Would you like me to address the question about the definition? There is a fine line when you are enacting statutes that apply to the Supreme Court. You could certainly add a definition here. What we try to do with statutes directed to the Supreme Count is leave a lot of the detail to them in their orders to determine the details of this type of program. You can certainly go either way, but I suspect that is why we drafted it this way. This would leave it so that if the Court chose to define "small business," and then decided that did not work as well, they could change it however they wanted to. If you would prefer to lock it down as to exactly what small businesses you would want it to apply to, you certainly could.

As to the other issue, the way the statutory scheme currently operates, it would not work if it were to apply to tenants. Instead of the mandatory type mediation, this is in a separate section in which the Supreme Court may adopt rules providing for voluntary mediation. This is a lesser part of the mediation program. It is only the single-family owned-and-occupied residence that is the mandatory part.

SENATOR CARE:

Since it is permissive, the Supreme Court may adopt rules normally. I understand mediation in the case of the homeowner and the lender, but I think courts might be inclined to say that where it is a business loan, the parties knew what they were getting into and mediation is not necessary. The Court could take that approach and not adopt a rule if it chose not to do so under certain circumstances. Would that be correct?

MRS. ERDOES:

Yes, Senator Care. I believe that is absolutely correct.

MR. KRMPOTIC:

Section 20, pages 40 and 41, increases the fee for filing a certificate of dissolution. Throughout the remaining sections of the BDR, there are a number of fee increases proposed by the Secretary of State. I believe that fee increase schedule was provided to Committee members last week when Secretary of State Ross Miller testified before the Committee. A number of the fees proposed by the Secretary of State include statutory changes, which begin with section 20. That section also includes a couple of fees that have already been implemented: the Securities

Exemption Fee and the Standardization of Expedite Fees. Those two fees that have already been implemented by the Secretary of State beginning February 1 total $4,289,107. The other fees listed in section 20 and beyond total $4,257,000. Those are two fee increase solutions that the Secretary of State has proposed to address the budget shortfall. I am not going to go through each individual fee increase, but the increases included in this bill are consistent with what the Secretary of State presented to the Committee three days ago.

I am going to page 53 of the BDR. I would note for the Committee's information that the foreclosure-mediation process is currently in place. The current fee is $50 which goes to the Court Administrator to fund the mediation process. Subsection 10, paragraph (a), calls for an increase to $150 on each notice of default. This sum is deposited in the General Fund and is anticipated to generate $13.8 million over the biennium.

Section 34 begins on page 57. This is a fee increase of $5 in the administrative court assessment. This increase is applied to misdemeanor crimes. The $5 increase in the court assessment is directed to the General Fund. That is expected to generate $2,310,530. There is new language on page 60 with respect to municipal courts and on page 61 with respect to justice courts.

On page 65, section 35, subsection 7, this gives the Director of the Department of Corrections the authority with the approval of the Board of Prisons to establish transfers from the Offenders' Store Fund, which is a non-General Fund budget account, to provide for the operation and maintenance of offenders' stores, coffee shop, gymnasium and correctional officers salaries for visitation posts. Subsection 7 allows for the transfer from the Offenders' Store Fund with corresponding reductions in General Funds. This change in statute provides for the implementation of 10-percent reductions, which are referred to in section 1 of the bill.

SENATOR CARLTON:

I remember talking about the fund, the store, the coffee shop, the gymnasium, but I do not remember using this offender money to supplant salary dollars. Did I miss something?

MR. KRMPOTIC:

I do not know if that was covered in great detail during previous Committee hearings, but it was a proposal that was forwarded by the Governor and included in the worksheets that were provided to the Committee members.

SENATOR CARLTON:

I apologize. It is very late in the game to look at this. But when offenders start paying the salaries of their corrections officers, we are getting very close to a debtor's prison. That makes me uncomfortable. I have no problem with asking them for their money for their electronic devices and all these other things, anything above and beyond what it costs to actually take care of the prisoner. When they start paying their officers' salaries, I wonder what direction we are going.

SENATOR HORSFORD:

I see that it is specifically salaries for visitation posts, so I do not know what that specific distinction is, other than perhaps we cannot afford to have visitors visit the prison because we cannot afford the guards to watch them. Is that it?

MR. KRMPOTIC:

Normally, a visitation post is provided in the budget of the Permanent Corrections. I believe the Department was trying to identify a nexus between the Offenders' Store Fund, which generally benefits the inmate, and the visitation area in the institution, which has a similar benefit. I believe this recommendation is identified for 2011 only. It was very questionable as to whether it could be continued on an ongoing basis because of the funding levels in the Inmate Welfare Fund and the Offenders' Store Fund. The corresponding General Fund offset for this recommendation totals $1.7 million in the second year of the biennium.

SENATOR HORSFORD:
Let us note that. Maybe we can send a letter to the Director expressing some concern about that policy, since it was proposed by the Administration.

SENATOR COFFIN:
Why not make it a loan from the Offenders' Store Fund to the General Fund? In that way, you would overcome the ethical dilemma, which I believe is correctly outlined by Senator Carlton. It would be a simple amendment to make to the bill. Should the bill come over here from the Assembly on this subject, that might be a way to clean it up.

MR. KRMPOTIC:
This is probably an area where you may want to consider some kind of correspondence to the Director, as Senator Horsford suggested. I can tell you that the Department has proposed this on a couple of occasions through the IFC, and they have been turned away. One of the reasons they have been turned away has to do with the legal authority to be able to make the transfer from the Offenders' Store Fund. I would also note that the Department of Corrections has received a number of restorations, though this is not one of those items that have been restored. Due to these restorations, while other agencies have incurred a 10-percent reduction in their budget, the Department of Corrections has incurred a 2.8-percent reduction in their budget. If you decide to do away with this item, it would probably require other funding from another area of state government to make up the difference in savings.

SENATOR CARLTON:
If I read this correctly, the money is coming out of the Store Fund to pay for this. If there is no money in the Store Fund, you cannot go visit your person. If we are talking about the dollars here, it is not state dollars. It is the Store Fund dollars.

SENATOR HORSFORD:
Right, that is the point. If there is no money, there will not be a post, and you will not be able to go visit the inmates. It is a requirement to provide visitation posts.

SENATOR LEE:
I am thinking of the humanitarian side here. If children cannot visit their fathers, if you cannot have your children come visit you with your family, you might not be the most hardened criminal in the world, but this is a deprivation that is too onerous on a young family. Children need to see their father. He needs to guide them what good he can in their life. If they have to put money in his account in the Store Fund so that he was going to buy something from the store before they take it to get money to them, I do not know how this is going to work. It is just immoral to be able to stop people, especially young children, from seeing their father or mother. They might not be the most wonderful example in the world, but children should not be deprived of that. I think that should be stricken. Thank you.

SENATOR WASHINGTON:
I do not know if there is a line item for this or not. How much money are we actually talking about?

MR. KRMPOTIC:
This item represents $1.7 million in savings.

SENATOR WASHINGTON:
Is this out of the General Fund?

SENATOR HORSFORD:
It is not a General Fund source. If you restore it, then we are short $1.7 million because we do not have it.

MR. KRMPOTIC:
The prison institutions currently have a visitation post. This is taking the existing General Funded position and funding it 50 percent from the Offenders' Store Fund. There are going to be a number of things that are up in the air as far as what is funded and not funded. In the next biennium, there is a possibility that they will eliminate or reduce the visitation post. The visitation post is necessary because the inmates are with their families and there are other family members there. It is a safety issue in the institutions.

SENATOR WASHINGTON:
Did you indicate that the Director had submitted this proposal once before to the IFC and it was turned down? Could you restate why it was refused?

MR. KRMPOTIC:
The Director was turned down because Legal Counsel opined that statutory authority did not exist for the IFC to act on that recommendation. This language that is in the BDR now would provide that legislative authority, so the agency and the Governor have made the recommendation on that basis.

SENATOR WASHINGTON:
Is this a normal practice throughout the country Do other states provide this kind of service through their store funds?

MR. KRMPOTIC:
I am not sure what other states do. The Store Fund is a self-sustaining fund based on food and drinks inmates purchase from their own funds. It is also replenished through telephone commissions that the Department has a contract for and the purchase of certain staples, such as clothing and electronic devices. It is kind of an enterprise fund, if you will. My guess is that other institutions in other states probably have a similar setup to what Nevada has. As far as the funding of the visitation post, I have not researched that.

SENATOR WASHINGTON:
I am familiar with the store as far as the other items that are listed. I am just wondering about the visitation post.

MR. KRMPOTIC:
In my dealings with the Department of Corrections, the visitation post has been a mandated post in the Department. However, I do not believe it is funded on a full-time basis because it is a part-time duty, unlike a tower position, which is manned 24 hours a day, 7 days a week. I believe it is manned 8 hours a day, 5 days a week.

SENATOR WASHINGTON:
If this language is stricken and the visitation post is removed, does that preclude any other type of organizations or groups from visiting because there is not an officer on duty?

SENATOR HORSFORD:
I do not know the answer to the latter part. I will say that I do think it is a valid issue where families need to visit the inmates. I feel comfortable with this because it will be handled by regulation, and those regulations will come to the Legislative Commission. If there are some concerns with how the fees are being applied, we of the Legislative Commission would be able to raise those at that time. Due to our budget constraints, this is one of those "out of the box" approaches and flexibility that is being requested by the Department of Corrections. As the Fiscal Division notes, this is a part-time position to the extent funds can be raised to allow visitation hours beyond a part-time basis. It would actually address part of the issue whereby families and outside visitors are able to come and not just on a part-time basis.

SENATOR WASHINGTON:

With that statement and that intent, I am fairly comfortable if it comes back to the Legislative Commission or the IFC.

SENATOR HORSFORD:

All regulations are adopted. As far as the budget is concerned, I know that if we attempted to restore this, at this point, it would not balance. That is obviously a concern.

SENATOR NOLAN:

I was a little reluctant to talk of this issue, although I am sensitive to it and agree with it also. Our family has an individual we are close to who is incarcerated. We have actually visited him in three of the institutions, and I can tell you that in each of those facilities, quite often correction officers also rotate through the room. It is not just one person sitting in the visitation post constantly. In two of the institutions, the officer is also manning other responsibilities in the area, keeping an eye on gates as people come in and go out and also keeping an eye on the visitation room. It is my personal experience that there is probably latitude in here for the Department of Prisons. I do not know anything procedurally about how they do it; I know there are a number of safety concerns. It seems from my personal experience that there are probably enough officers around for them to manage this situation. If we have to keep this in for the purposes of balancing the budget, I agree with the preceding discussion. We can get there if it goes before IFC for reconsideration.

SENATOR HORSFORD:

The intent here is there are positions that probably are part-time. To the extent that there are funds that can be provided by this Offenders' Store Fund, they would be able to extend visitation hours and the post.

SENATOR CARLTON:

That was why I was reluctant to bring it up, but I felt it was something we should discuss. I am hoping that with all the changes we have made to Corrections—going to 12-hour shifts and raising the overtime limit to 84 hours—there will not be as much overtime pay, and the institutions will not need to use this money for this post and will be able to squeeze it into the budget for the next year. I would like to send a message to them that we do not want to see the opportunity for families to visit be diminished because of this.

SENATOR HORSFORD:

With that objection, I will work with staff to draft a letter expressing the concerns and intent from the Committee of the Whole to the Director.

MR. KRMPOTIC:

Section 35, subsection 8 includes new language establishing a fee that would be established by the Director, by regulation, for the purchase of electronic devices that are purchased by inmates to defray the cost of operation of those devices.

Section 36, subsection 2, includes a transfer by the Legislative Commission of the first $100,000 from the fee that is established for lobbyist registration to the General Fund. I believe there is some intent to increase that fee to generate this revenue. The fee would go from $100 to approximately $160 to generate the additional $100,000 revenue.

Section 38 includes the allocation of funding. This again relates to the Secretary of State and the proposals that were submitted by Secretary of State Miller. This would reallocate remaining portion of the Notary Training Fee to the General Fund. That is 75 percent to generate approximately an additional $150,000.

Sections 41 and 42 provide authority for the State Parks Administrator and the Director of the Department of Cultural Affairs to seek advances from the General Fund. This would fund more of those budget accounts with fee revenue. Normally, that fee revenue is generated on a periodic basis and deposited into each of the budget account of those departments; however, the expenditures to operate those departments are ongoing. The General Fund advance would

basically help those agencies maintain their cash flow. Those advances would be paid back once sufficient revenues are generated.

Section 43 places fees for vital records, moves those fees from statute to regulation and provides the authority to the Health Division administrator to establish those fees by regulation. Again, this is another fee solution to solving the budget shortfall. Revenues of $368,000 would be generated once these regulations are passed.

SENATOR RAGGIO:

I do not think section 45 reflects the decision that was made with respect to the fees to be charged by the Athletic Commission. It was my understanding that this was a first version, but that the understanding finally was that the percentage increase was 2 percent of the admission fees or the gate, and that there was to be no increase on the broadcast, television or motion picture fees. That was my understanding. The amount that would be raised is a little more than $1 million. That would be sufficient to self-fund the Athletic Commission. That was my understanding.

SENATOR HORSFORD:

Senator Raggio, that is correct. I have asked Legal to correct that to the extent that can be addressed in the version that is coming from the Assembly, if possible. That was the original proposal. This was a drafting error. Section 45, subsection 1, paragraph (a), would read "Six percent" rather than "Five percent," and paragraph (b) would be deleted.

MR. KRMPOTIC:

Section 47 addresses increases to Mining Claim Fees. Subsection 1 would not require a fee on any mining claim held by a person who holds less than 11 mines. Under subsection 2, for those persons holding not less than 11 and not more than 199 mining claims, a fee of $70 is imposed on each mining claim. For those holding not less that 200 and not more than 1,299 mining claims, the fee would be $85 on each mining claim. For those holding not less than 1,300 mining claims, a fee of $195 would be imposed on each mining claim. This is anticipated to generate $25.7 million towards the budget shortfall.

SENATOR RAGGIO:

Section 69 indicates that section 47 would sunset at the end of the biennium. I did not understand that to be the intent. If it is, I want to understand that that is what is reflected in this measure. What happens at that time under this sunset provision?

MR. KRMPOTIC:

It is my understanding that the provisions in section 47 would expire unless reauthorized by the 2011 Legislature.

SENATOR RAGGIO:

All right, thank you.

MR. KRMPOTIC:

Section 53 effects reductions to K-12 funding by 6.9 percent compared to what was authorized by the 2009 Legislature. You will note the reductions in the basic support guarantee by county. The actual reductions in the K-12 appropriation at the 6.9-percent level total $27.6 million and $87.4 million in the second year of the biennium. This is to the Distributive School Account (DSA). The reduction in basic support per pupil as a result of those reductions and appropriations total $65 per student in FY 2011.

The reductions in the appropriations in section 55 on page 89 relate to the DSA. In the second year of the biennium, the reduction includes the $87 million that I just referred to, as well as an additional $25 million. An anticipated $25 million is directed for school support from Clark County. This is redirected to government services tax, according to our understanding. This would be used to fund basic support in Clark County in lieu of General Fund appropriations.

Therefore, you will note in the second year of the biennium, the reduction to the appropriation to $1,154,625 reflects both the 6.9-percent reduction and also the use of the $25 million.

In section 57, you will note a decrease in teacher incentives from $24.8 million to $16.2 million. Section 58 allows for use of the $25 million that I just referred to for basic support in the school district.

Section 59 reflects restorations. These restorations are General Fund appropriations that make up for TANF transfers that are discontinued in the Governor's plan. These transfers supported autism at each of the regional centers noted on pages 92 and 93. The reduction in the TANF is recommended to address a caseload shortfall in the Division of Welfare and Supportive Services in their TANF cases.

Section 60 of the bill includes appropriation to the Division of Child and Family Services. These appropriations provide for additional staff and associated expenses to house youth at the Nevada Youth Training Center and Caliente Youth Center that are currently housed at Summit View in Las Vegas. The Governors' recommendation is to close the Summit View facility and to move those children to each of the facilities noted in section 60.

SENATOR HORSFORD:

I would like to work with staff to prepare a letter to Child and Family Services expressing some of the safety concerns with moving those youth from Summit View to either Caliente or the Nevada Youth Training Center to ensure that the safety of the surrounding communities and other children at those facilities are taken into account. I also would like to ensure that prior to the Division taking any action to lease the Summit View Youth Correctional Facility, those items be brought before the IFC so that there is public hearing on those options before any commitments by the Division, the Department or the State are entered into. If there is no objection, I would like to have that letter prepared with staff assistance.

MR. KRMPOTIC:

Section 61 on page 94 provides for appropriations to the Secretary of State to fund six new administrative assistant positions to support case processing. I believe this was referred to by Secretary Miller during his presentation.

Section 62 represents a request by the Gaming Control Board for an appropriation of $87,000 to fund a new agent position to perform audits of smaller Nevada casinos.

Section 64 provides for a tax-amnesty period beginning July 1 through October 1. The amnesty is anticipated to generate an additional $10 million in revenue.

Section 65 on page 95 provides for a desk-audit program in the Division of Business and Industry. One of the discussion topics that has occurred for some time regarding the budget shortfall is an anticipated uncollected amount of insurance-premium tax proceeds that was identified through an Executive Branch audit last year. I believe between $50 million and $160 million was identified. There has been dispute about the amount of unclaimed insurance-premium tax that could be collected if a desk audit program is implemented. The Insurance Commissioner estimated that between $3 million and $12 million may be uncollected. The desk-audit program is anticipated to generate $10 million.

Section 66 on page 96 provides for transfer of TANF funds if they are received to other programs. For instance, under section 66, subsection 1, paragraph (a), a transfer of $3 million to Title 20 programs which would offset General Funds in the Family Resource Centers and the Family to Family program, additional TANF funds to offset the appropriations were made to the regional centers totaling $1.5 million. It also restores transfers to Clark and Washoe Counties in the amounts noted on pages 96 and 97 with like reductions in the DCFS Division of Child and Family Services Integration Accounts. Section 66 is based on the anticipated receipt of $22 million in TANF funds that has not been approved. This would bring in an additional $9,269,929 in revenue.

That completes my presentation of the BDR. You will find the effective dates and expiration dates in section 69.

SENATOR CARE:

Section 31, subsection 11, states, "The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection 10." This is a new fee, the recording fee, the filing fee of $150. I had an issue as to whether that might constitute impairment of a contract and violate the contracts clause of existing loan agreements. The Legislative Counsel Bureau (LCB) has already taken a look at that and has concluded that it does not, that it does not meet the first requirement that it be a substantial impairment. If that is the approach of LCB, I will let it go at that.

Secondly, it is my understanding that the Governor has agreed to this new fee of $150, so if that is part of the deal, so be it. But there is another issue here, and that is what happens in the case where the borrower enters into some kind of a workout with the lender or is able to refinance the loan or in some fashion cures the default. In other words, the lender has filed a report of the notice of default and election to sell and has had to pay the $150, and then the borrower cures the default; and maybe down the road, the borrower defaults a second time, so the lender files again and has to pay another $150 fee, and then the process is repeated. I do not know how frequently that would happen. I would suggest it probably would not impair the projected $13,000,800 under this item. I do not know what the sentiment of the Committee is. But when the time comes for possible amendments to be entertained as to this bill draft that is one that I intend to pursue, depending on the sentiment of the House. Thank you.

SENATOR RHOADS:

Did the money that was cut on the Bookmobile get back in the budget?

MR. KRMPOTIC:

The Bookmobile funding was restored in the budget.

SENATOR RAGGIO:

During previous hearings, I asked about the funding for the National Judicial College and the Family Court Colleges. I do not see it specifically referenced, but I was under the impression they were not eliminated altogether but merely cut by 10 percent in their allocations. Is that correct?

MR. KRMPOTIC:

I do not see it on the judicial-cut list.

SENATOR HORSFORD:

We will confirm it, but I believe it was just cut 10 percent because it is no longer on the judicial-reduction list. We will have that confirmed.

SENATOR TOWNSEND:

I am sure you are aware of this, but this body owes a tremendous vote of thanks to not only Mr. Krmpotic but the entire staff of the Fiscal Division. This is no longer a labor of love. It is just a labor. He is to be commended for how well he and his staff provided all the information as quickly as we asked for it.

SENATOR HORSFORD:

I could not agree with you more, Senator Townsend. Mark and others are assuming their new duties at a time when we are experiencing such major budget shortfalls, but they have done an incredible job. We appreciate their hard work and the incredible hours they have put into the process.

We will have a short recess while the bill draft is being distributed.

At 11:08 p.m.

Senator Care presiding.

SENATOR CARE:

Members of the body, you will find before you BDR 35-47, which provides revenue to create jobs for road construction. In a moment, I will ask for a motion to introduce the BDR, and we will then have testimony provided by the Majority Leader and Mr. Atkinson from the Assembly.

Senator Schneider moved to introduce BDR 35-47.
Senator Wiener seconded the motion.
Motion carried unanimously.

SENATOR CARE:

While this bill does not fall under the purview of either the original proclamation for a special session or the first amended proclamation, it is my understanding that the Governor has agreed to entertain this legislation should it come before him.

SENATOR HORSFORD:

Yes, the Governor's Office has indicated support for consideration of this item. There is both a letter and a new proclamation that has been delivered to the Legislature with that addition.

One of the clearest lessons of our current budget crisis is that we need to create jobs in Nevada. We cannot fix our state budget unless we take bold steps to fix our economy. There are even better reasons for us to take these bold steps: the thousands of Nevadans who are without jobs, who are losing their homes and whose families are suffering. In my opinion, we cannot leave this Special Session without having done something for all of them.

Our economic crisis has its roots nationally, but solutions to this crisis must begin here in Nevada with us. That is the motivation behind the jobs bill that is before you. The bill proposes to dedicate a modest share of state and local revenues to use as seed capital for up to $430 million in bond issues that will finance road and highway improvements and create an estimated 12,000 direct and indirect jobs as a result. These jobs will bring down our record-setting 13-percent unemployment rate and help alleviate our budget crisis by helping working Nevadans spend their income.

But as I said, the most important element is that thousands of Nevadans will be working again earning a decent income to support their families. The Nevada Jobs Initiative has the following elements that will begin to move us forward. First, it would extend a 1/8-percent sales tax that was approved by the voters of Clark County for road projects and which had been scheduled to sunset once $1.7 billion in projects were completed. That will occur later this year when the next $300 million in bonds are released.

Next, it proposes the cap be lifted so that the Regional Transportation Commission can continue to bond for additional road projects with the estimated $40 million that the 1/8-percent sales tax brings into Clark County annually. This money will flow, as it does now, collected by the Nevada Department of Taxation as part of the sales tax collection in Clark County and then remitted to the county.

Finally, the initiative also proposes to lift a cap on the amount of revenue that can be collected through the 3/4-cent per gallon tax on gasoline and diesel fuel for cleanup of underground petroleum storage tanks. This would allow about $3 million in current revenue to go directly towards job creation.

Taken together, all of these measures would generate an estimated $43 million for bond financing of about $430 million in highway and road projects. The southern Nevada RTC would receive bonding authority based on the sales tax revenues, as well as a 70-percent share of the fuel taxes paid into the Underground Storage Tank Fund. The Washoe County RTC would receive a 20-percent share of the fuel-tax revenues, and Nevada's rural counties would receive 10 percent of the fuel-tax revenues.

The concept for this legislation originated with the Associated General Contractors, and it is supported by both labor and management in our hard-hit construction industry. That industry knows better than any other what the protracted recession has meant in human terms, with the jobless rate in its industry exceeding 50 percent statewide. Theirs is the picture of Nevada's economic tragedy, and we need to do something about it right now, even in the midst of our

budget crisis. The Associated General Contractors estimates that for every $500 million spent on road and highway projects there would be a resulting 4,250 direct on-site construction jobs, 21,000 in construction-supply industries and 7,500 in other sectors that are stimulated by the construction spending as workers spend their new income. Based on a $430 million initial investment in bond issues for road and highway projects, Nevadans could expect to gain about 12,000 new jobs in the next 12 months, with another 3,000 to 6,000 jobs in the follow-up round of funding. Behind those numbers are real people and real families. This piece of legislation can make a huge difference in their lives, and I would urge this body's support.

I would like to thank my colleague, Assemblyman Atkinson, as well as Senator Schneider and others who helped to work on these ideas. As chair, Assemblyman Atkinson has worked in the transportation area, and he knows best the needs in our infrastructure and roadways. When we can both create jobs and meet our State's infrastructure needs, that is an important combination.

ASSEMBLYMAN KELVIN ATKINSON (Clark District No. 17):

I know it is getting late, and we have a few other things to do before we adjourn. To not repeat a lot of what the Majority Leader has said, it is very important that we try to do something to address our roads in this State and put Nevadans back to work. We felt this was the best way to do it after consulting with various people, including the Governor's Office, and going back and forth with this bill draft. We felt this was the best way to affect our State and the number one industry in this State that is suffering the most and getting a lot of them back to work.

SENATOR RAGGIO:

I do not know how deep we are going into this bill. I certainly support the concept of doing something to provide funding which will provide construction jobs throughout our State. In reading through the bill, section 4 gives the Department of Motor Vehicles (DMV) the authority to charge and collect fees through regulation, striking all of the fees that are presently enumerated. Then section 8 indicates that the DMV shall continue to collect those fees until the regulations become effective. Section 4 looks like a blank check because there is no indication of the amount of fees to be set by regulation. If I am not reading the bill correctly, I would appreciate some clarification.

ASSEMBLYMAN ATKINSON:

We worked on section 4 with the Governor's Office. We had originally proposed that those fees be increased. The Governor's Office did not want us to raise fees, so we took them out, but we wanted to give the DMV the ability to seek fee increases through regulation in the future. That is why you see it being struck out in section 4 and put into section 8. It gives them the authority to increase those fees through DMV regulations if they choose to do so. But if they do, it has to come back before us first. That is why we did it that way.

SENATOR RAGGIO:

I understand the suggested concept, and I am certainly not trying to obstruct the bill, but the way it is worded, it says until a new fee is imposed by regulation, these existing fees continue. My concern is that under section 4, we have not indicated in any way the amount of those fees, as we did, for example, in the budget bill. We should at least give some guidelines to the agency or board that was going to increase fees by regulation. I have some concern about what I think appears to be a blank check, although I know they have to go through the regulation procedure.

SENATOR TOWNSEND:

I do not know how you want to address that, but usually we give a range.

I have a technical question. In section 1, subsection 3, paragraph (a), the bill states 70 percent of the money in the account shall be allocated to a county whose population is 400,000 or more. The national census will occur in 2010. If Washoe County reaches 400,000, the way the language is currently drafted, it would dilute Clark County's portion so that it would be split 50-50 with Washoe. I know that is not the intent, so we might want to get that clarified.

SENATOR CARE:
We should hear from our Legal Counsel on that one.

SENATOR NOLAN:
Earlier today, I received a summary of this bill draft, so we anticipated it. I agree with what we are trying to do in the way of helping to sustain jobs and keep our road construction going. I just have a couple of questions. I have not been approached by anybody from either the DMV or the Nevada Department of Transportation (NDOT) on this. My first question is whether the funding included in this bill is identical to the sources that the money which is currently being allocated. We are looking to extend this revenue string because it is sunsetting, correct? I am just wondering if it is being allocated in the same way those funds are currently being allocated.

SENATOR HORSFORD:
Yes, it is in the same manner.

SENATOR NOLAN:
Secondly, normally we get a sheet outlining what those expenditures were and what projects specifically the money is going toward. I did not know if that could be made available or not.

SENATOR HORSFORD:
Representatives from the industry are here and can perhaps elaborate on how the funds would be used for specific or potential projects.

SENATOR MCGINNIS:
Section 6 of this bill removes the prospective expiration on the collection of certain gross-receipts tax in Clark County. Can you tell me what those taxes are used for now and how much would be generated? Were they put in there by vote of the people?

SENATOR HORSFORD:
First, it was an advisory question by the voters. The Nevada Legislature authorized the Clark County Commission to increase the sales tax by 1/8-percent for road construction. That was for bonding purposes. The bond amount that was authorized by the Commission at $1.7 billion is set to be met later this year. There is one additional bond that will be released for $300 million, and then they will meet that limit. This legislation allows that same rate to continue to be collected for the dedication of additional road projects in Clark County.

SENATOR AMODEI:
To the Majority Leader and the distinguished Chair of the Assembly Transportation Committee, I appreciate the information you have provided on the generating of jobs, and I applaud your effort to generate jobs within our State. Generating jobs with Nevada tax dollars is something that I do not think anybody disagrees with. Is there anything in RTC regulations which provides with some sort of local preference? I intend no disrespect to our neighboring states, but I would hate to generate jobs with something like this and then have them go to out-of-state folks. This is to generate jobs for our folks. I am hoping there is something in there that gives us the assurance that our local folks will have every possible advantage in those contracts.

ASSEMBLYMAN ATKINSON:
Originally, we had language that said that the jobs would remain local. There were a few issues with that, and we are going to try to have the industry people address it when they come up to speak. Preferences are a little tough to deal with this late. That was one of the problems.

STEVE HOLLOWAY (Executive Vice-President, Associated General Contractors of Southern Nevada):
I would like to thank the leadership of both Houses as well as the Governor's staff for working with us on this bill. We think it is an extremely important bill. We represent an industry

that has laid off over 70,000 workers in the last two years and is getting ready to lay off thousands more. This bill will go far to help to turn that around. I am not going to cite the statistics, but I will just add one statistic. For each $1 billion that this bill adds, it will add $3.4 billion to the gross domestic product in this State, and a third of that total will show up as personal earnings. This is huge. We have people losing their homes from our industry right and left because they are unemployed. Almost 50 percent of those unemployed in this State are construction workers or workers whose jobs were dependent on the construction industry. We have talked to all four caucuses about this.

JOHN MADOLE (Nevada Chapter Associated General Contractors of Northern Nevada):

Mr. Holloway covered most of the important points. We had four of our members that were down here most of the day because they were concerned about wanting to get this bill passed and to put people back to work, but they could not quite make it this late at night. I guess they will read about in tomorrow's paper.

SENATOR CARLTON:

Mr. Holloway, could you answer Senator Amodei's question about Nevada's taxpayer dollars funding Nevada jobs?

MR. HOLLOWAY:

We attempted to get that provision in this bill that would require the contractors to utilize 80-percent local work force on these projects. As Assemblyman Atkinson said, we simply ran out of time to get it into the bill. However, we have not had that problem with RTC in the south, which is where the bulk of this money will be going. That is primarily due to legislation you passed a couple of sessions ago. That legislation gave 5-percent bidder's preference in bidding for these jobs. Also, these are engineering jobs, and they must self-perform at least 25 percent of the work, which ensures that we are using contractors who are local or at least based in Nevada.

SENATOR RAGGIO:

Section 1 establishes an account that must be used exclusively for the construction of reconstruction, improvement and maintenance of public roads. Section 5 then indicates what the account consists of, specifically money from NRS 590.860, which is the balance in the Fund for Cleaning Up Discharges of Petroleum. Under this bill draft, that money, specifically, goes into the account for construction and so forth of roads. I would ask the bill drafters how you get the money if you do the fees I referenced earlier? I do not see any directive that would provide those fees into this account. I assumed that was the purpose, if any fees are increased, to have them used for this purpose. I may be wrong in my assumption.

SENATOR HORSFORD:

The fees in section 4 do not pertain to the account. That was a section requested by the Governor in the deliberation on this bill draft in order to give latitude to the DMV to be able to adjust fees through the regulatory process. The only sources of revenue that would go into the account are the ones from sales tax and the Petroleum Clean-Up Fund.

BRYAN GRESH (Regional Transportation Commission of Southern Nevada):

My purpose here this evening is to inform the body that, based on what we have been talking about for the past several weeks, the total number of shovel-ready projects that we have ready to go as we sit here before you this evening is more than two dozen, closer to three dozen, with a total price tag of $1 billion. We have the projects ready to go to put unemployed men and women back to work. We simply need the dollars to do that. This would allow us that opportunity.

PAT SANDERSON (Laborer's International Union Local 872):

Thousands of unemployed construction workers are begging for work in highway projects. We thank you for listening to us. We hope this goes forward. The contractors and the people

who are looking for the jobs need this, so we thank you for everything you have done. We hope this moves forward at a rapid pace.

VERONICA METER (Las Vegas Chamber of Commerce):
Given the late hour, I will be brief and echo some of the positive comments that have been expressed about this bill tonight. The Chamber is in support of this bill. In short, it will create and preserve private sector jobs. It will also get our economy going, and that is a good aspect of our recovery. Also, very importantly, it will put Nevadans back to work. We would appreciate your support as well. Thank you for this opportunity.

CHRIS FERRARI (Nevada Contractors' Association):
On behalf of our 200 members and the more than 10,000 employees who have built much of the infrastructure we rely upon in southern Nevada, we thank you in advance for your support of this legislation.

SENATOR CEGAVSKE:
I would like to know what the sunset provision in the original bonding is.

SENATOR HORSFORD:
There actually is no sunset date that was approved by the Legislature. Rather, it was an amount established by the County Commission when they enacted the sales tax. That amount was $1.7 billion. Because they are about to approach that, once they release the final $300 million bond without further extension, they would not be able to do any additional bonding.

RUSSELL ROWE (American Council of Engineering Companies of Nevada):
We are strongly in support of this legislation. We have been decimated like many other sectors in this State by the recession. Well over 50 percent of engineers are out of work and need this type of work to get these jobs. We look forward to rebuilding the infrastructure in Nevada.

RANDY SOLTERO (Sheet Metal Workers Union, Local 88):
I am here to support this bill draft. The language of this bill is something we look forward to seeing, and it is going to create a lot of jobs for many of our members and many members of the other trade unions who are desperately in need of jobs. Thank you so much for your support, and we encourage you to pass this bill quickly.

SENATOR TOWNSEND:
If the population of Washoe County were to reach 400,000, the way section 1 is drafted, you would have to divide that 70 percent between Washoe and Clark. That is the way I read it.

MS. O'GRADY:
After the reapportionment, when we change the populations, we will adjust it to keep the same classes. Washoe County would still be in a separate class and Clark County would still be in the same one. We would adjust those numbers so it would work and would not change the groupings.

SENATOR CARE:
As I can recall, in 2001, we got a thick bill at the end of the Session, and we had to take into account the changes in the census. In the next Session, we will get another bill like that, and then, statutorily, we will decide. We will keep the classifications and adjust the numbers, and that would apply to the regulations adopted prior to the 2011 Session.

SENATOR WASHINGTON:
Can you tell me how the projects are prioritized or vetted? Do they go through the Transportation Commission and then passed on to NDOT and RTC for final approval of those shovel-ready projects? Who is actually prioritizing the projects and vetting those projects?

ASSEMBLYMAN ATKINSON:
That is correct. During the last Session, we as a legislative body prioritized a lot of their projects. When we are not in that phase, NDOT and RTC prioritizes their own projects. In Clark County, the County Commission typically assists the RTC in prioritizing theirs. I believe NDOT reports to a board that the Governor is a part of.

SENATOR CEGAVSKE;
Did the voters approve a certain amount? Was there a certain amount that was stated? If you could just kind of go back on that, I would appreciate that if there was any general information. What was sent to the voters for the voter approval?

SENATOR HORSFORD:
I would defer to the industry. It is my understanding that there was not. I do not want to represent something that I do not have in front of me.

MR. HOLLOWAY:
I was part of the RTC stakeholders group that advanced proposition 10 almost ten years ago. We did not include any caps in the proposition. The voters simply approved increasing the sales tax for roads and highways in Clark County. The cap was actually recommended by the commission and put into statute by this body.

SENATOR CEGAVSKE;
Was the original advisory question $2.7 billion? Then we capped it at $1.9 billion, is that correct?

MR. HOLLOWAY:
I do not recollect that there was a cap included in the proposition. There were discussions on the amounts that it would raise, but my memory does not serve me to that extent.

SENATOR CEGAVSKE;
I was just trying to figure out if we put the advisory question on at $2.7 billion and it was approved, why it was capped at $1.9 billion.

MR. HOLLOWAY:
I do not know why it was capped, but I know that on all these advisory questions this body has traditionally either capped or sunsetted them as they did with the 1/4-percent that goes to the water district, which is split with 1/8-percent to the water district and 1/8-percent to the sanitation districts. Traditionally, this body has been the one to cap these as they come forward with these propositions. I do not recollect that you capped RTC this last session.

SENATOR AMODEI:
I am just looking at page 8. I do not know the genesis, but it looks to me like the 1/2-percent sales tax was set to sunset either when the Department of Taxation let us know it had reached $1.7 billion or when we reached June 30, 2028. I do not know how that got there. But if I am reading this proposal correctly, we are removing both of those limiting factors, the $1.7 billion and the June 30, 2028, so that the 1/2-percent goes for RTC projects unless or until a new date or a new cap is put on it. There is not one on it now, so it would go on to perpetuity. Is that correct?

MR. HOLLOWAY:
Currently, 1/8-percent went to mass transit and 1/8-percent went to road construction, and that was to terminate when we got to $1.7 billion or 2028, whichever came first.

SENATOR AMODEI:
If I understand the Majority Leader, we are going to get to $1.7 billion with the final sale of $300 million, and we will be at that cap. Is that your understanding?

MR. HOLLOWAY:
Yes. As soon as they release the $300 million in projects they are preparing to release, we will have reached that cap.

SENATOR AMODEI:
The cap will be $1.7 billion rather than 2028. What piece of a percent of sales tax are we going to use in Clark County to fund this?

MR. HOLLOWAY:
One-eighth percent will go to road construction for RTC.

SENATOR AMODEI:
There is no cap or sunset as presently styled in this law, so it will go for these sorts of projects in perpetuity.

MR. HOLLOWAY:
Unless this body decides to end it, yes.

SENATOR AMODEI:
I am phenomenally sensitive to the need for jobs now, not that there is ever not a need for them. Was there any discussion about a time period that gets us through the present crisis, a five-year time period or something like that? I am not saying that it is a good thing or a bad thing. If it is "in perpetuity," this is a road-construction funding bill hereafter.

MR. HOLLOWAY:
What we are talking about here is taking $40 million and parlaying that into about a $400 million bond in the first year. But that $400 million bond has to be paid over a period of time. For every $400 million bond that we parlay into, we have got to extend this out an additional 20 years to repay that bond.

SENATOR AMODEI:
So is the answer to my question yes?

MR. HOLLOWAY:
Yes.

SENATOR PARKS:
If I might refresh everybody's memory with regards to the 2002 Fair Share Funding Program, there were a number of different factors that were put into the program in order to sell it to the voters for their support. First of all, there was a $2.7 billion overall program intended to be generated over a 25-year period. The other question that seems to be sticking in some peoples' minds deals with the sales tax. The 1/4-percent sales tax was to be split in half. Half of the 1/4-percent would terminate upon one of two things happening: either the date June 30, 2028 (25 years out) had been reached, or the amount of $1.7 billion had been raised. The other half of the 1/4-percent would continue on for ongoing transportation maintenance activity.

SENATOR CARE:
It is now 11:57 p.m. on February 28. The body will remember that in the First Amended Proclamation issued by the Governor for the 26th Special Session, there was a mandate that we adjourn at 11:59 p.m. on February 28, two minutes from now. I am going to have entered in the Journal, if there is no objection from the Senate, a legal opinion dated today.
I will just go to the last sentence in the concluding paragraph quoting now:

> However, given the plenary power of the Legislature to control the length of its legislative sessions, any recommendation from the Governor concerning the length of the special session would not be binding or enforceable on the Legislature, and the

Legislature would be free to determine its own date and time to adjourn *sine die* regardless of any recommendation from the Governor.

SENATOR CEGAVSKE:

I am grateful for Senator Parks' response. I want to also let everyone know that the ballot question is online. That brought up another question, however. The question posed to the voters was, "Shall the Nevada Legislature authorize the board of Clark County Commissioners to implement this … which will generate approximately $2.7 billion over 25 years?" My question is, we have spent $1.9 billion over 7 years, so I was interested in the timeline and what they were thinking for the balance of that. How do they calculate it when it says in one place that it is supposed to be $2.7 billion over 25 years, but after 7 years they have already spent $1.9 billion?

SENATOR HORSFORD:

I have requested the representative from the RTC to return to the body so he can answer those questions. First, because it was an advisory question, those were estimates rather than specific figures. As far as the next round, according to what Mr. Holloway just explained, the obligations on the $1.7 billion and the way it would work on the bonding is it would go out to 2028. Because there are needed transportation projects right now that would also help put people back to work, the concept would be because that cap, due to the amount that is now being reached, that will be extended. How long it would be extended is based on several factors. First, what is the bonding rate you would get? Is it 7, 8 or 9 times return? This proposal recommends $40 million. In order to extrapolate the bonding provisions, that would produce approximately $430 million in bonding capacity that would typically be paid over a 20-year period. That would be from 2028 through 2048, depending on their ability to get the best bond possible. That is how it was explained to me.

SENATOR WASHINGTON:

Based on the explanation from Senator Parks, is that 1/8-percent the funding that is going to be spread throughout the State? Is that generated by Clark County?

SENATOR HORSFORD:

No. The one-eighth percent from the Clark County sales tax collection will remain in Clark County. The Petroleum Clean-Up Fund, beyond the amount that currently goes to the clean-up of tanks, is estimated at $3 million per year, which can be bonded. That is the amount that would be allocated based on the breakout to Clark, Washoe and the rural counties.

SENATOR WASHINGTON:

Mr. Gresh, we talked about the vetting of projects moving through the RTC and then their prioritization by NDOT. I wanted to know what role the RTC plays in that vetting process, selecting those projects? How do they determine which projects move to the top and which to the bottom of the list?

MR. GRESH:

It is a collaborative effort. As you know, the Director of NDOT sits as an ex officio member of the board of the RTC and is at all of our meetings. There is a collaborative effort between her and our board to determine which projects fit through the Transportation Improvement Plan. Each year, that plan is updated with the input from our board to what they ultimately pass at the state level with our input. The same thing happens here at the Washoe RTC with the NDOT. It has been that way as long as I have been affiliated and, probably, long before that. It has always been a collaborative effort.

SENATOR CARE:

We will close the hearing on Senate Bill No. 5.

Senator Parks moved to do pass Senate Bill No. 5.
Senator Wiener seconded the motion.
The motion carried unanimously.

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

SENATE IN SESSION

At 12:25 a.m.
President Krolicki presiding.
Quorum present.

REMARKS FROM THE FLOOR

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

It came to my attention that we have not been distributing bills and amendments around the building as fast as we should before we vote and in time for witnesses to have a chance to read them and take a look and comment. We ought to make sure if we do any of that today, we make sure they are out there. They are not available, and I have been hearing a lot of complaints. I do not know whether that was by design or by accident, but let us change it.

SENATOR HORSFORD:

All the measures that have been formally introduced by the Committee of the Whole are public and have been made available. That has been done, and we have been making every effort to ensure that as the committee approves introductions, those measures have been made available to the public.

MESSAGES FROM THE GOVERNOR

STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

February 28, 2010

THE HONORABLE STEVEN A. HORSFORD, *Senate Majority Leader*, Nevada State Senate,
401 South Carson Street, Carson City, Nevada 89701

TO THE HONORABLE MEMBERS OF THE NEVADA STATE SENATE:

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

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

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

Sincerely,
JIM GIBBONS
Governor of Nevada

OFFICE OF THE GOVERNOR
EXECUTIVE ORDER
SECOND AMENDED PROCLAMATION

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

Therefore, I, Jim Gibbons, Governor of the State of Nevada, by virtue of the authority vested in me by the Constitution of the State of Nevada, hereby amend my First Amended Proclamation

dated February 24, 2010 and extend the 26th Special Session of the Nevada Legislature until 5:00 p.m. on Monday, March 1, 2010.

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

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

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

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

JIM GIBBONS
GOVERNOR
ROSS MILLER
SECRETARY OF STATE
NICOLE LAMBOLEY
DEPUTY SECRETARY OF STATE

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Senate Bill No. 5—AN ACT relating to governmental financial administration; revising provisions governing the Fund for Cleaning Up Discharges of Petroleum; authorizing the Department of Motor Vehicles to set the amount of certain fees by regulation; removing the prospective expiration on the collection of certain gross receipts taxes in Clark County; and providing other matters properly relating thereto.

Senator Care moved that the bill be referred to the Committee of the Whole.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

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

STEVEN A. HORSFORD, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 28, 2010

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted, as amended, Senate Concurrent Resolution No. 1, Amendment No. 9, and respectfully requests your honorable body to concur in said amendment.

LUCINDA BENJAMIN
Assistant Chief Clerk of the Assembly

GENERAL FILE AND THIRD READING

Senate Bill No. 5.

Bill read third time.

Roll call on Senate Bill No. 5:

YEAS—21.

NAYS—None.

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

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Concurrent Resolution No. 1.

The following Assembly amendment was read:

Amendment No. 9.

"SUMMARY—Urges local government employers and local government employee organizations to mutually address the impacts of the budget shortfall. (BDR R-38)"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Horsford moved that the Senate concur in the Assembly amendment to Senate Concurrent Resolution No. 1.

Motion carried.

REMARKS FROM THE FLOOR

Senator Care requested that the following letter be entered in the Journal.

February 28, 2010

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

DEAR DIRECTOR MALKIEWICH:

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

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

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

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

BACKGROUND

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

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

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

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

After the Legislature convened the special session, the Governor exercised his power under Article 5, Section 9 to call additional legislative business to the attention of the Legislature by

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

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

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

> [I]t is our opinion that a Nevada Governor's exercise of extraordinary, exclusive and discretionary power to convene a special session and to specify the subjects for consideration at such session necessarily includes the discretionary authority to revoke or amend a proclamation convening such special session. Included within such power to revoke would be the authority to specify within the proclamation a specific time period during which the proclamation shall remain in force and effect. Accordingly, it is our opinion that the Governor possesses authority to specify a durational time limit for such special session.

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

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

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

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

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

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

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

The Legislative Counsel has been designated by statute as the legal adviser on all matters arising within the Legislative Department of the State Government. NRS 218.695 & 218.697.[1] As the legal adviser to the Legislative Department, the Legislative Counsel is required by statute to issue an opinion upon any question of law when such an opinion is requested by any member or committee of the Legislature or the Legislative Commission. NRS 218.695. The Attorney General is not statutorily authorized to render an opinion to a member of the Legislature, and the duty to provide a legal opinion to a member of the Legislature falls upon the Legislative Counsel. See Op. Nev. Att'y Gen. No. 2002-36 (Oct. 4, 2002).

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

A. Separation of powers.

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

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

(Emphasis added.)

In creating a tripartite system of state government, the Nevada Constitution expressly vests the state's legislative power in the Legislature. Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1103 (2009). Specifically, Article 4, Section 1 of the Nevada Constitution provides that "[t]he Legislative authority of this State shall be vested in a Senate and Assembly which shall be designated 'The Legislature of the State of Nevada.'"

Because the legislative power of this state is vested in the Legislature, the Governor may not exercise legislative power unless the Governor's exercise of that power is expressly permitted by the Constitution. See State of Nev. Employees Ass'n v. Daines, 108 Nev. 15, 21 (1992); Galloway v. Truesdell, 83 Nev. 13, 20-21 (1967). Thus, if the Constitution does not expressly

permit the Governor to exercise legislative power, the implication is that the Governor is prohibited from exercising that power at all. Stated another way, when the Constitution grants powers to a particular constitutional officer or department, "their exercise and discharge by any other officer or department are forbidden by a necessary and unavoidable implication. Every positive delegation of power to one officer or department implies a negation of its exercise by any other officer, department, or person." King v. Bd. of Regents, 65 Nev. 533, 556 (1948) (quoting State ex rel. Crawford v. Hastings, 10 Wis. 525, 531 (1860)). Consequently, when the Constitution grants a particular power exclusively to the Legislature, the Governor may not exercise that constitutional power by implication. See Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1103-05 (2009).

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

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

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

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

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

In contrast to the Governor, the Legislature does not derive its constitutional powers from the text of the Constitution. Rather, the Legislature possesses all inherent power of the people unless that power is clearly limited by the Federal Constitution or the State Constitution. Ex parte Boyce, 27 Nev. 299, 332, 334 (1904); Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672, 675 (1988). Whereas the Governor must be able to point to express provisions of the Constitution to justify the Governor's exercise of constitutional power, the Legislature does not need express constitutional authorization to justify its exercise of constitutional power because "[t]he constitution allows the legislature every power which it does not positively prohibit." City of Las Vegas v. Ackerman, 85 Nev. 493, 502 (1969) (quoting Sharpless v. Mayor of Phila., 21 Pa. 147 (1853)). As often noted by the Nevada Supreme Court, the power of the Legislature is extremely broad and "except where limited by Federal or State Constitutional provisions, that power is practically absolute." Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Even when the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). Additionally, because the powers of the executive and judicial branches are expressly defined by the Nevada Constitution, any power which is not clearly committed to those branches by the text

of the Constitution is completely denied to them and is left exclusively to the legislative branch. See City of Pawtucket v. Sundlun, 662 A.2d 40, 44 (R.I. 1995). Therefore, because the provisions of the Nevada Constitution are to be strictly construed in favor of the power of the legislative branch, it is a fundamental rule of constitutional construction that any doubt or ambiguity concerning the constitutional powers of the executive branch must be resolved in favor of the power of the legislative branch.

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

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

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

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

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

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

Courts and commentators have concluded that such provisions mean that a legislature may be adjourned *sine die* only with the consent of both houses and that a legislature may not be adjourned *sine die* under any other circumstances, unless there is a specific and express constitutional provision to the contrary. See Taylor v. Beckham, 56 S.W. 177, 179 (Ky. 1900); Story at §§ 843-44; Cushing at §§ 448, 495, 516; see also Frame v. Sutherland, 327 A.2d 623, 626-27 (Pa. 1974); In re Opinion of the Justices No. 115, 47 So. 2d 642, 643 (Ala. 1950); In re Opinion to Governor, 85 A. 1056, 1057 (R.I. 1913). Thus, once a legislature has been convened,

the general rule is that the legislature is the sole judge of how long it needs to remain in session to complete its legislative business, subject to any time limits expressly set forth in a constitutional provision. See Opinion of the Justices No. 173, 152 So. 2d 427, 428 (Ala. 1963); Wells v. Purcell, 592 S.W.2d 100, 105 (Ark. 1979); Sims v. Weldon, 263 S.W. 42, 45 (Ark. 1924); Richards Furniture Corp. v. Bd. of County Comm'rs, 196 A.2d 621, 625 (Md. 1964); Davis v. Thompson, 721 P.2d 789, 792-93 (Okla. 1986); State ex rel. Distilled Spirits Inst. v. Kinnear, 492 P.2d 1012, 1016-23 (Wash. 1972).

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

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

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

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

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

As discussed previously, Article 5, Section 9 of the Nevada Constitution does not contain any language expressly authorizing the Governor to establish a binding and enforceable time limit on the length of a special session or to terminate a special session once it has convened. The only power expressly conferred on the Governor with regard to the termination of a legislative session is found in Article 5, Section 11 of the Nevada Constitution, which provides that "[i]n case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; Provided, it be not beyond the time fixed for the meeting of the next Legislature."

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

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

> occasions. It would seem safe to surmise that, if the framers had intended to limit the length of the sessions provided for in this article, they would have mentioned that limitation in the section wherein they set forth the power of the Governor to convene the legislature.

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

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

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

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

When Justice Story's constitutional analysis is applied to the Nevada Constitution, it follows that the only source of constitutional power entitling the Governor to terminate a legislative session is found in Article 5, Section 11, which allows the Governor to terminate a legislative session in cases where the two Houses disagree with respect to the time of adjournment. In no other case is the Governor allowed to interfere with the time and extent of the Legislature's deliberations. Because Justice Story's constitutional analysis is consistent with the text of the Nevada Constitution and with the fundamental rules of constitutional construction, we believe Justice Story's analysis supports the conclusion that the Governor does not possess any implied constitutional power to limit the length of a special session or to terminate a special session once it has convened.

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

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

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

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

their intent to eliminate all constitutional limitations on the length of special sessions, it would be unreasonable to conclude that the Governor has implied power to impose a limit on the length of special sessions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is also a fundamental rule of constitutional construction that the constitutionally based separation of powers cannot be waived by either the legislative or executive branch. Comm'n on Ethics v. Hardy, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1108 (2009). Consequently, regardless of the degree of assent or acquiescence by the legislative or executive branch, actions which

infringe on the structural protections of separation of powers are unconstitutional. Freytag v. Comm'r of Internal Revenue, 501 U.S. 868, 879-80 (1991); Clinton v. City of New York, 524 U.S. 417, 445-46 (1998). Thus, the Legislature, by either its assent or acquiescence, cannot give the Governor the legislative power to determine the length of a special session.

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

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

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

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

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

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

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

Given the importance that meaningful public participation and legislative hearings and investigations play in our representative democracy, it would be unreasonable and absurd to interpret the Constitution to provide the Governor with unbridled discretion to determine the

length of a special session when such unbridled discretion could be used to limit public participation and deprive the Legislature of sufficient time to deliberate and debate the merits of proposed legislation. As explained by one court, "[i]nherent in the power to enact laws is the power to deliberate, and deliberation necessarily requires time." State ex rel. Distilled Spirits Inst. v. Kinnear, 492 P.2d 1012, 1016 (Wash. 1972).

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

Finally, if the Constitution were interpreted to allow the Governor to limit the length of a special session or to terminate a special session once it has convened, that interpretation could be used to deprive the Legislature of an immediate opportunity to override a veto during a special session. Article 4, Section 35 of the Nevada Constitution establishes the Governor's power of veto. That section gives the Governor 5 days in which to exercise a veto and return the vetoed bill to the Legislature if it is in session. The Legislature is then given the immediate opportunity to override the Governor's veto. However, if the Legislature, by its final adjournment, prevents the return of the vetoed bill, the Governor is given 10 days after the Legislature's final adjournment to file the vetoed bill with the Secretary of State. Under such circumstances, the Legislature is not given an opportunity to override the Governor's veto until its next legislative session. See Jones v. Theall, 3 Nev. 233 (1867).

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

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

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

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

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

The paucity of legal authority to support the advisory opinion of the Florida Supreme Court was highlighted by the two justices who joined in an insightful dissent to the advisory opinion.

The dissenting justices noted that there was no provision in the Florida Constitution expressly authorizing the Governor to limit the length of a special session and that "one branch of the sovereignty will not be empowered to exercise control over a coordinate branch by implication." Id. at 215 (Drew and Thornal, JJ., dissenting). The dissenting justices also noted that the Governor was given specific and precise constitutional powers to call a special session and to state the purposes for the special session and that, by stipulating such specific and precise executive powers, the Constitution excluded the inference that the Governor could impose additional restrictions on the legislative power. Id. at 215-16. The dissenting justices concluded that "once the Governor activates the legislative process by the proclamation for an extra session, then, by the very nature of the legislative power, the Legislature itself controls the matter of its recesses or adjournment within the time limitations stipulated by the Constitution." Id. at 215.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

Very truly yours,
BRENDA J. ERDOES
Legislative Counsel
BY KEVIN C. POWERS
Senior Principal Deputy
Legislative Counsel

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

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

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

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 12:31 a.m.

IN COMMITTEE OF THE WHOLE

At 12:42 a.m.

Senator Horsford presiding.

State's budget shortfall considered.

The Committee of the Whole was addressed by Senator Horsford, Brenda Erdoes, Legislative Counsel; Senator Raggio, Senator Nolan; Senator Schneider; Senator Care; Senator Coffin; Senator Washington; Mark Krmpotic, Senate Fiscal Analyst and Senator Amodei.

SENATOR HORSFORD:

Convening as Committee of the Whole, we will take up Assembly Bill No. 6. Mrs. Erdoes is here to walk us through the amendments that were made in the Assembly. I believe they incorporate some of the items that were reviewed during the hearing.

MRS. ERDOES:

The first change that was made is on page 20 of BDR 31-43. At the bottom of the page, the last number in the right-hand column was $7,500,000. That number was deleted and the number $8,089,065 was put in its place. That relates to the provisions that were taken out in the back.

SENATOR RAGGIO:

Is that the line that says "Developmental Service"?

SENATOR HORSFORD:

No. Ms. Erdoes is working off the reprinted version and not the one that you have.

MRS. ERDOES:

I will just tell you then what the changes were.

The change is at the very end of section 1. The Board of Examiners Salary Adjustment Account was changed to $8,089,065. The next change that was made is to section 29, subsection 1, paragraph (a). The change was put back to the fee as it was, so it should show "Broker/dealer, $300." The $330 was deleted.

What happened here is that once the errors were discovered, the Assembly had not yet introduced that BDR. The BDR was redone, and it was fixed; so when it was introduced, those changes were all fixed. I can go through and show you where those changes are.

SENATOR HORSFORD:

That would be best. We can all work from Assembly Bill No. 6 that was adopted by the Assembly, and Mrs. Erdoes will notate the changes.

I would now like to enter into the record the water issue because that measure will not be brought up. We have a motion to express legislative intent. Legislative Counsel has prepared an outline that I will make available to the members. It has been entered in the Assembly record as well so that we can express our legislative intent on the issues regarding the water rights legislation. Without objection, it will be entered into the Journal.

SENATOR NOLAN:

With regards to this measure, what is our legislative intent?

SENATOR HORSFORD:

I will make this copy available. If there are additional questions, we can ask Mr. Powers to come back and answer any questions.

SENATOR SCHNEIDER:

Does that fix the problem that is perceived with the Supreme Court?

SENATOR HORSFORD:

The Supreme Court case will still be pending. Our hope is that by expressing some legislative intent on the record, that can be considered as the proceedings continue.

SENATOR CARE:

I have not read it, but the document that the Majority Leader has had entered into the Journal does not constitute part of the record for purposes of legislative intent. It is an expression by the Legislature in the 26th Special Session. It is something that the Supreme Court may or may not consider, if it wishes, assuming one of the parties wishes to attach it on the briefs on the motion for rehearing. It is just a statement from this body trying to straighten out what supposedly we meant in 2003. It is not part of legislative intent. That is the record that goes back to the Session itself in 2003.

SENATOR COFFIN:

What is your procedure for the replacement of a bill that would have been the curative legislation for the problem, perhaps a resolution of some kind? In place of a bill addressing the water difficulties in southern Nevada, what is your method of sending a message to the Court?

SENATOR HORSFORD:

Because there was not agreement on the legislation that was before us, both the original version as well as subsequent versions that have been discussed both here and in the Assembly, Legal Counsel has prepared a statement that will be part of the Journal record that will outline the legislative history on this matter so that when and if this issue comes up before the Supreme Court, that could be taken into consideration.

SENATOR NOLAN:

Not to belabor that issue, but I understand that we no longer have a bill to move. To discuss that issue, especially if the Assembly is not willing to take action on it, does not make sense. It seems as though the Supreme Court would have done a thorough review of the historical record. What was mentioned was that they had considered the minutes of the meeting. I do not know that legislative intent was established, based upon how I understand it and the comments that were made on the floor regarding the bill. If staff had also considered the floor discussion prior to the final action taken in either House, that might be helpful as well in establishing legislative intent. This is an enormous issue of huge magnitude that does deserve some additional deliberation. Any letter that we send now, as I understand it, is going to end up falling not to the Supreme Court, although we may forward it to them, but to the Appellate Court to which the issue has been remanded. If I am incorrect in that, please help me out.

SENATOR CARE:

I am sure Mrs. Erdoes knows this better that I do, but I think what we have is simply a document that has been entered into the record addressing the issues that arose from the debate last night and today, on the Assembly side, as to the intent of the Legislature in the 2003 Session as to Senate Bill No. 336. The record for legislative intent has to be discerned by what happened back in 2003. We cannot change that. But if one of the parties in that litigation wishes to attach that opinion to the briefs leading up to any hearing on the matter heard previously by the Court, they are free to do that. The Court can give that whatever weight it wishes. It does not have to, but it can if it wishes. That is all.

SENATOR COFFIN:

I am very concerned about the way we handled this. There was an intense interest on the part of the members to have some sort of movement on that issue. It is the most important issue facing Clark County today, except perhaps for the realignment in the budget which is occurring this morning in the shift of dollars from Clark County, the economic engine of the State.

We are now confronted with probably an erroneous district court decision, a puzzling Supreme Court decision, except for lawyers that understand the fine points of these things, and a legislative session that was convened, conveniently, at the same time and then called by the Governor to address this problem. It is in the amended Proclamation. We had a hearing last night; apparently, that bill was not satisfactory to many people. But it appears that no bill was satisfactory to many people, not a majority that I know of, because we are not having a test on this issue.

We were going to have a discussion. We had a bill, and then the discussion stopped here and moved over to the Assembly. A lot of people of good will who are here from Clark County and all over the State are curious as to what happened. It was not too long after that started in the Assembly that word traveled around that it was merely a show, a sham, in the Assembly to kill time, maybe be a sop to people who felt like they needed to have the issue discussed and really were hoping for relief from, in my opinion, mistaken Court decisions.

Now it appears the clock has run out. That is a stall. That is better than a basketball game. That is taking the clock and running it out. We end up with nothing if we say that we are not going to address the issue. We are permitted to meet until 5 p.m. today, and I propose that we just not leave it that way, that we not just throw up our hands in mock despair and say we could not do anything, because we still could.

SENATOR HORSFORD:

I speak for myself and other members when I say that this is clearly a very important issue, one that does deserve more attention than this Special Session allows. The issues we heard last night, as well as the additional discussion throughout the day, did not reach an agreeable resolution for us to act on. That is why we are at the point where we need to, at a minimum, enter a statement for the record so that we can continue to work on these important issues and bring them back if necessary in the next legislative session.

We will now go back to Assembly Bill No. 6.

MRS. ERDOES:

I am now working from the actual bill itself, Assembly Bill No. 6. In section 1 of the bill, item 27, the Board of Examiners Salary Adjustment Account has been changed to $8,089,065; it had previously been $7,500,000. That is related to the removal of fees in the back of the bill.

Section 29 covers licensing fees for securities brokers, and the changes here are the most comprehensive in the bill. The licensing fee for broker-dealer, subsection 1, paragraph (a), has been changed from $330 to $300. The licensing fee for investment advisor, paragraph (c), has been changed from $330 to $300 also. The licensing for representative of investment advisor, paragraph (d), has been changed from $110 to $125. In subsection 2, the second sentence now starts, "A broker-dealer who desires … " where it used to say "… broker-dealer or investment advisor …". In this same sentence, the fee for a branch office license has been changed back to $150; it had been increased to $150, and it was reversed. In the next sentence, the fee to file an amendment to a branch office application has been changed back to $50; it had been increased to $75, and that has been reversed.

SENATOR HORSFORD:

Just for explanation, those were items that had been proposed but were not part of the final budget agreement, but they still made it into the BDR. They are now corrected to the plan that had been mutually agreed upon by all parties.

MRS. ERDOES:

Correct.

In section 29, subsection 2, the renewal fee has been changed from $150 to $100. In subsection 3, the phrases "or investment advisor" and "or representatives of an investment advisor" were removed.

Section 39 has been deleted. It was a fee section from the Secretary of State. It was an amendment to NRS 240.1657, which concerns the Secretary of State's fee for authentication to verify that a signature of a notarial officer on a document is genuine. The fee increase was from $20 to $30.

Section 45 deals with the Athletic Commission. In section 1, paragraph (a), the percentage of total gross receipts has been changed from 5 percent to 6 percent. In paragraph (b), the language has been restored to "Three percent of the first $1,000,000 and 1 percent of the next $2,000,000."

Sections 48 through 52 have been deleted. Section 48 was an amendment to NRS 600.340 regarding fees charged by the Secretary of State; the filing fee to register a trademark had been

changed from $100 to $150, and that change was removed. Section 49 was an amendment to NRS 600.355, the fee to correct an inaccurate trademark registration. Section 50 was an amendment to NRS 600.360, the renewal fee for the registration of a trademark. Section 51 was an amendment to NRS 600.370, the fee to record an assignment of a trademark. Section 52 was an amendment to NRS 600.395, the fee to cancel registration of a trademark. All those fees have been reverted to their original amounts.

Those were all the changes.

SENATOR COFFIN:

In this procedure, I cannot tell if we are amending the act of the last Session. I am looking for "back language" that might already be in the statute; in which case, we do not need it in this bill, but I need to find out if that is what our actual procedure is. Are we amending the Budget Act of 2009?

MRS. ERDOES:

No, you are not. Sections 1 through 4 are actually new numbers that are being placed in here. These were not made as amendments to the Budget Act. Instead, section 1 begins, "The following reductions are hereby made to the appropriations from the State General Fund." The numbers that you see in these columns are reductions to appropriations that were previously made.

SENATOR COFFIN:

I cannot find the "back language" in this bill that we typically have in the Appropriation Act. I am thinking specifically of that language reinforcing the prerogatives of the Legislature through the IFC. Is that in here somewhere and I missed it?

MRS. ERDOES:

No, because only the sections in which that "back language" would be amended would be in here. Those "back language" sections still apply. These are just reductions to the amounts in that budget. The "back language" that was in the 2009 Appropriations Act is still valid. It stands alone. There was no need to include it in this bill because it was not changed.

SENATOR COFFIN:

Will it apply to any of these changes and new provisions that were not in the Budget Act of 2009?

MRS. ERDOES:

It will apply; the 2009 provisions still are in effect. This is just a reduction of some of the numbers that are in the 2009 Budget Act.

SENATOR COFFIN:

In that case, I have a question of the Fiscal staff. We are not typically handed the budget quite so soon before deliberation. What I wanted to clarify was one item on the Millennium Scholarship Fund (MSF). We are dealing with long sheets, short sheets, a bill draft and a bill. The MSF comes to mind as one thing that I have to question. I want to make sure that I understand correctly the remaining time in the fund, effectively, with all the transfers back and forth. There are a number of accounts where money moves. Is the MSF in effect now going to expire in the year 2011 if nothing else is done?

MR. KRMPOTIC:

I have just passed out the latest sheet reflecting the changes Mrs. Erdoes described in the bill. The action proposed in this bill would remove the transfer from the unclaimed property account to the MSF, which currently totals $3.8 million each year. In the Legislature's action last week, there was also a fund sweep of the MSF account totaling $5 million.

The best way to describe the MSF is that currently there is a balance available in the MSF that would assist in sustaining the fund through 2018, if nothing were changed in the budget bills

from the 2009 session. The effect of these reductions in impact to the MSF is to take that reserve and eliminate any margin in the account, so that whatever revenues are coming into that account in the form of tobacco settlement funds evenly offset expenditures. In 2011, we will reach that state where there is no reserve and revenues are offsetting expenditures. Our analysis shows that the fund will exist in that form for a couple of more years, and then will go into insolvency, where there is a negative reserve, beginning in 2013 or 2014. That is the effect on the MSF as a result of these actions.

SENATOR COFFIN:
Can the insolvency occur in 2011?

MR. KRMPOTIC:
It could go into the red in a large way beginning in 2014.

SENATOR COFFIN:
I forgot to add the sweeps bill, which passed out of here over my single vote against it. Now we have another document we have to reference, if people are interested. We will be able to ask questions of each other when the bill comes back on General File, but I find it hard to ask questions of our staff. Is there anybody, Mr. Chair, who is going to defend this reduction at this time? Do we have anybody is going to speak on behalf of these changes?

SENATOR HORSFORD:
I will.

SENATOR COFFIN:
Then I will ask to be recognized later.

SENATOR HORSFORD:
Clearly, after being faced with a nearly $1 billion shortfall coming into the Session, we had to identify ways in the last few weeks, working in a bipartisan manner, to identify areas we could cut and areas we had to protect and, then, to balance both of them. We identified additional revenues to fund the budget, in part, by increasing certain user fees and redirecting non-General Fund accounts to support education, health and human services, and public safety programs that are funded by the General Fund. The cuts were all reviewed by the Committee of the Whole and also in a series of public budget hearings over the last three weeks. Based on the comments that were made earlier, while there are things in here that none of us really like, the alternative would have been literal 20-percent cuts across the board to everything, including education, health and human services, and public safety. That was unacceptable. What is before the body now is the work of this Legislature in cooperation with the Governor and staff, the Budget Office and our Fiscal staff to fund State government to the best of our ability at this time.

SENATOR AMODEI:
Mrs. Erdoes, section 47 is the Mining Claim Fee. There was an indication that this had a sunset clause. Where is the sunset language that would apply to this?

MRS. ERDOES:
Section 69, subsection 5, states that sections 36 and 47 expire by limitation on June 30, 2011.

SENATOR HORSFORD:
Are there any more comments on Assembly Bill No. 6? Seeing none, we will close the hearing on Assembly bill No. 4.

Senator Lee moved to do pass Assembly Bill No. 6.
Senator Parks seconded the motion.
The motion carried. Senator Coffin voted no.

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

SENATE IN SESSION

At 1:16 a.m.

President Krolicki presiding.

Quorum present.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 28, 2010

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 6.

LUCINDA BENJAMIN
Assistant Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, March 1, 2010

To the Honorable the Senate:

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

LUCINDA BENJAMIN
Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 6.

Senator Care moved that the bill be referred to the Committee of the Whole.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee of the Whole, to which was referred Assembly Bill No. 6, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

STEVEN A. HORSFORD, *Chair*

GENERAL FILE AND THIRD READING

Assembly Bill No. 6.

Bill read third time.

Remarks by Senators Horsford and Coffin.

Senator Coffin requested that the following remarks be entered in the Journal.

SENATOR HORSFORD:

This bill is the work of a bipartisan, dedicated Legislature working in cooperation with the executive branch, the budget office, the governor's office and his staff to meet our obligation to have a balanced budget that funds essential services. As I indicated earlier, this does not reflect all of what any of us wanted, but it reflects the reality we are faced with as a State, approaching an additional nearly billion-dollar shortfall which we were able to bring down to just over $800 million. This is on top of the nearly $1 billion in cuts made during the last legislative session. Fortunately, because of listening to the public, considering new ideas and proposing ways in which we could raise revenue without increasing taxes, we were able to bring down the

cuts to the most essential areas, cut some parts of government that were necessary, but preserve our commitment to education, healthcare and public safety.

I urge the body's adoption of Assembly Bill No. 6.

SENATOR COFFIN:

I would like to join the majority leader in his remarks about the bipartisan nature of our legislature and about whatever happened in the working group that was working on this thing. They worked pretty hard. I would also like to extend a bouquet to the Governor and his staff, with whom I enjoyed working over the past couple of months on these problems. The last couple of years have not been so good; his relationship with the Legislature has been rocky. But I have to say he has really stood up and been the Governor the past couple of months. I am sure in his opinion, it has been an unbroken string, but I can assure you things are a lot better now. I appreciate that, because you cannot solve these problems without all the branches of government working together. I hope, going from this day forward with a predetermined outcome, that we have a continuation of that. There are statutes in play that require the Governor to work with the legislature. There was a time when he did not, but in the past 5 or 6 months, it has been much better in terms of following the statutes as laid out in the back language of our last two appropriation acts.

It was three and a half weeks ago in a public hearing here in Carson City that I recognized, after working on this problem for a couple of months, that we could not just solve it with cuts, that we had to have a lot of revenue come in. I was told at that time, "Forget about taxes, because there is no way we will pass taxes. We will find a way, somehow or other, to mitigate the cuts." As the days went on, little solutions popped up here and there; some were rejected, some were accepted. Generally, this did not happen in the public eye, although every now and then someone would issue a press release and there would be some leak about a fee. A fee on this, a fee on that; a fee on your foot, a fee on your hand, a fee on your pocketbook. It was a three-letter word that started with F, but never the one that starts with T: Tax.

I look at the labor that has been exerted on the budget so far. Some improvements have been made with fees I do not think the public understands and probably will not begin to appreciate until they have had a chance to read the newspapers and see the television reports after today. Generally speaking, although there has been some openness here amongst us in this body, there has not been anything with the public in terms of the kind of bill drafts you would see floating out there, and the press, our representatives to the public, have not had access. They have been screaming for copies, screaming for data. Every now and then, a long sheet like one of these would come out of the four-party-plus-one talks, and it would contain some information that was not easy to understand, even if you have been on the money committees as I have for most of the last 27 years.

So I paid intense attention throughout the last few weeks, and then this week I was not part of the process. I do not know all the chemistry that occurred in these four-party-plus-one talks, but this is the result of it: sweeping a couple hundred million dollars from accounts for which there probably will be legal action in some cases. We took money from business people, trades people and professionals who pay fees for the regulation of their businesses and their professions. By legislative fiat, we just took it, and we took a perilous amount in some of those accounts. That was a bill that passed nearly unanimously. You see now that it ties into your final budget solution.

Well, those savings were only part of it. Now tonight you have heard some inkling of the fees that have been increased, but you had to go over it real quick, because you just got this bill around midnight, and you may not know all that is in it. If you do, you can be sure your constituents do not. That is a shame, because typically in budgetary affairs of this size, you at least let the budget lay for a couple of days—that is our rule, I think—and you get a chance to hear back from the public. In a typical budget exchange, you have had 100 days of deliberation or more, and everyone knows what is in it. In this case, it has not been transparent; it has been very opaque. We may tell ourselves it is bipartisan, and it is, but just in the sense of a small group of people in each party bringing it out as a fait accompli to the rest of the body.

I do not think we are in balance, and it is our duty to have a balanced budget. I do not know whether anybody is going to object or protest or vote no on this thing besides me, but that is not

my position. I do not believe I can go out of this building for my life and see us leave crawling and wringing our hands and saying, "Well, we did all we could. We agonized over the cuts." And we did cut, but we did not really exert our maximum effort. It would have taken a tax increase to bring this into some health. Not a big tax increase, but it is obvious we did not tax enough in the last session, or we would have been in less trouble. But that is an argument for historians to engage in.

I see fees, which could be called taxes in anyone else's jargon, levied on practically everything you can do, and some we have no idea what the fiscal impact will be. I will not attack any of those fees; I will just let the constituents attack them. I think more along the lines of the damage we are doing to education. We can say that it is almost irreparable, because there is a slippery slope you travel on. When we exerted what probably would be called maximum effort last session, we arrested the slide in the deterioration of our educational system. We cut people's pay, and we did a lot of things to try to balance; and we did, in a very bipartisan manner. Now we fall deeper into the hole, and instead of addressing the problem frankly, we just let it go. We said, "We can't do anything." And now, we have cut K-12 education roughly 7 percent; we have cut higher education roughly 7 percent. We have no idea how that cut is going to be spread through our system of education because we leave the boards of education in the various counties to do the cuts in the school districts. We know they are going to remove all of the vacant positions that should have been filled years ago, and now they are gone. So we are way down in teachers. In the universities, I have no idea how it is going to affect them, but the regents have to face it this week, and in May they will make their final decisions about whether they have to cut more.

We have definitely put the future of Nevada in jeopardy for lack of nerve, for lack of will, for failure to address this thing in the appropriate way, which was to measure the need and then try to meet it. We did not even have a vote on an effort to meet the need. That is how you do this stuff. You do not have a little committee group and decide, "Well, geeze, I don't think we can do it. We just can't do it." I think I heard that in the discussion on the water bill a little while ago. You will never know what you could have done if you had confronted your fears and attempted to conquer them.

What we have done is put our Millennium Scholarship fund in great jeopardy, spending down all those reserves, borrowing money from here and there. Oh, I know there was a reduction in the cuts to the Health and Human Services budgets, so we made ourselves feel good by removing from public circulation the complaints that had arisen over some of the items that had developed what you would call an ugly reputation. But we left in $75 million in cuts, and we had already cut those agencies.

The teachers are actually sort of happy because the losses are not so bad. The professors are sort of happy because their losses are not so bad. They probably will not take pay cuts. But what did we do to the people who could not speak for themselves, the people that did not have a union or an association, or who do not have the money to unite? What did we do the mentally ill? I ran into a couple of the decent, gentle folks who live up here who were in peril, and they thought, "Surely our programs are going to be cut." Then they were told by an assemblyman, "Don't worry, it's all taken care of." I told them to go back and ask somebody else to verify that. And of course, the information that had been told them was false, and they felt bad, but they did not quite know how to feel bad, because you do not know how to feel when you are mentally ill. You are not quite sure if someone has just picked your pocket or become your very best friend. Those vulnerable people are very typical of the kind of folks who are going to have services curtailed.

Let us talk about the aged and the young. Where is their union? Where is their association? Where is it? Is it registered? Is there a lobby? Do they get paid? I do not think so, so you did not hear from them. I am not going to belabor the point here all night; I could talk for hours, and I am sure you do not want to hear that.

So somehow, the four-parties-plus-one talks found some money. They found money in local government. We did that last session, and all of us felt a little guilty about taking that money. We took money from local governments primarily in Clark County and some in Washoe County. These two large counties became donors to the rest of the State. Clark County in particular in the last session became a fountain of money for the rest of the State, to the tune of around

$300 million in room tax per year. Clark County taxpayers ponied up pretty good in the last session to support the rest of the State, and Washoe, to the extent that it could. I hope I am not leaving anybody out; any representative of those counties that were donor counties, please stand up and help correct the record.

But we did not stop there this time. We should have left that alone. But somehow, now we are finding money again in Clark County. We are finding it in the Clark County School District. We are taking how many millions away from the Clark County School District in one fashion or another, and we are going to take some more. We are going to take away property tax dedicated to the school district in Clark County, $25 million. Somebody said, "Well, we can take it. They don't need it." I have never heard of a school district that did not need some money. And somebody said, "Well, we don't need to build any more schools for a while, and that's what that money was for." We did that to Clark County and took the money from the government down there, and said, "Well, you know, you don't have to build any buildings for a while," no road construction perhaps, or whatever it was we took that money for. We said we would not take it forever, but we took it.

But now we take it from the very people whose occupations and whose life we value very highly: the educated and those who are seeking their education. We are taking it from them, and some members were told that the school district was all for it. Well, it is not true. You may have heard a representative say they were not using that money at the moment, but in fact, I have read news accounts quoting trustees saying, "Well, wait a minute. We have some schools that are 50 and 60 years old that need repair. We were not told the statute could allow us to use that money for repairs." Well, now we have grabbed it first. I do not think that is kosher. I do not think so at all. That is property tax, government service tax, GST source. For those who do not remember or do not know what it is for, that is from the automobile registrations. Half of that goes to the schools, half of it goes to the county of origin, with a little bit off the top for the State.

Last session, we increased the registration fees on automobiles. It was not a huge increase for most of us, but we all recognize, and I know the senior senator from Washoe County agrees because we have talked, that the complaints we have received are from the elderly with their old cars, who all of a sudden saw their registration fee double and even triple in some cases. We did not understand what we were doing last May when we did that. We did not understand the impact on those people. I have not forgotten it because we need to remember it. It was not a lot to us, but think about what $50, $60 or $80 means to someone who cannot afford it. That is where the school district money came from. So now you are going to take that property tax from Clark County, paid by these citizens who registered their cars thinking the money was going to be spent for the schools, and you are going to throw it into the great big gap called the Nevada State Budget. Oh, it helps the rest of the state a little bit, but it does not help Clark County schools.

Well, let's see. We went to grab some more money. This time, we found Clean Water Coalition funds, paid by developers and builders as a fee for construction and permits to build. It is related to the amount of water you might run through your pipes in some highfalutin formula that has been thought up down there. You know what? That was well-intended; a lot of that money was raised for a project to run waste water so deep down into Lake Mead and into the old river bed far away so we could have cleaner drinking water in Clark County. Somebody said they were not using it. They decided they cannot build it; maybe there are cheaper ways to do it in Clark County. So we said, "Let's grab it." I do not know whose bright idea that was, but hey, it was there, low-hanging fruit, so let's go get it. Nobody asked anybody; we are just going to take it. Could not Clark County use that now?

In this budget is a cut to child welfare. Are they not going to pay something out of that? I have a feeling they have to share some of our expense. We restored part of that, but we really did not restore it all. There are a lot of ancillary expenses. What else could they use it for? They are going to lay off people. They just have not hit the wall as we have. That $62 million would help. It is Clark County money being grabbed by the rest of the State. That is not fair. You just should not do that to your own constituents.

Mining claim fee increases, I suppose, are all fair and well for adults that are strong enough to go out and dig a hole in the ground. Maybe some of them can afford it; maybe it will not retard exploration. Maybe, maybe, maybe.

Well, the press now has all this, and they can ask you questions about what you did. I am not going to vote for it, so I can answer my questions clearly. Just know this: Do not go home and congratulate yourself for a job well done, because it is undone. We could have been here a lot longer and done a little better.

And you know, you could have even taken the cathouse money. It was offered up, $2.5 million a year, and the amendment was not allowed; the four-parties-plus-one group rejected it, I am told. Can you imagine? Legal brothels were the only industry in the State of Nevada to say in front of all of you that they would give you money. They were willing to pay it a year ago, and they reinforced that yesterday, even though their business is down a little bit. They chipped in. We had a lot of noise made that night, people yelling at the gamers and the miners and the bankers. And here was one soul who offered up money, probably not to his own benefit, I might add, because I do not think he checked with all the members of his association; he just said he thought it was the right thing to do. We turned that money down. You know, it is only $2 million a year, but think about what that could buy for some sick person, some elderly person. That is really shocking when you think about it. We take their tax money, as business people; we take their employee tax; we take their business license fee, and the counties take their health fees. You would think we could have taken a couple million dollars from those people, and I still do not have a reason as to why it was turned down.

There was another thing we could have done, and that is pass a sales tax. We did not even try. And I, for the purpose of not trying to embarrass everybody here, did not ask for the amendment, and I did not ask for a voice vote or a record vote or anything like that, on what could have been done. I really did not want to put individuals on the spot. The whole body is on the spot.

Thank you for tolerating the length of these comments. They could be a lot longer, trust me; I have done it. I do not want a reputation going out of here as being just a common scold. I wanted to try to give you a few examples of what we did wrong here. I am leaving, and I hope things improve economically, and I hope things improve for a lot of our folks. But if we do not do something to help them, we will have done nothing. The people who depend on us the most, the ones who cannot fight for themselves. Remember and ask yourself, "Where was I when the child needed help?"

Roll call on Assembly Bill No. 6:

YEAS—20.

NAYS—Coffin.

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

Bill ordered transmitted to the Assembly.

REMARKS FROM THE FLOOR

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

I note from the agenda that we are getting into the *sine die* proceedings. If you will indulge me, I would like to make some personal remarks.

When we adjourned last session, I did not foresee that the present makeup of the Senate would be called to serve together again. At that time, I did not take the opportunity to adequately convey my feelings upon the departure of so many members of this body, as a result of either term limits or personal issues. Since that time, that includes Senator Warren Hardy, who retired after our adjournment. So at this time, I would just like to say that it has been a distinct honor and a privilege for me to serve with every one of you.

I have had the distinct privilege to serve in this body since 1972, a period of 38 years. Our Senate has a great tradition. We have had some very distinguished individuals who have served here over the years. We have served in a body that has a great deal of dignity attached to it,

dignity and appropriate decorum. I have been humble and proud to be fortunate enough to be elected by the constituency I represent in Washoe County for ten consecutive terms to serve here and represent them.

In looking back, I would like to reflect that this special session has been one of the most challenging of all the sessions that I, and I believe most of you, have ever served in. We have been facing some difficult challenges, a difficult economy, severe financial issues and citizens who are living in very troubled times. The votes we cast in this special session are the most difficult in my memory, including the last vote we just took.

As I have been reflecting with some of you individually, it is unfortunate that there is so much political discord across the country at this time. There are partisan fights and venom spewing from political and partisan critics across the whole political spectrum. By contrast, during these last six days, we have had some disagreements and differences, but we were able to work together across party lines, across both houses and with the Governor and his staff. We have been essentially devoid of the acrimony that has occurred, for example, in Congress and other legislative bodies. This six days shows what you can do when you can set that kind of political acrimony aside and really work together. We have shown the entire political process elsewhere that it can be done.

Since this may be the last time all of this group will be together, I wanted to say I have been very proud and privileged to have served with the likes of all of you. I want you to know how much I appreciate the respect and the cooperation you have shown to me personally. Thank you.

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

I would like to recognize the newest member of our body, Senator Olsen. He distinguished himself quite well during this session. He was a great public servant. He learned our process. He worked very hard at it. He respected the decorum in the Senate, and he was involved in the decision-making process. Although he is probably retiring tonight, I wanted to give him his "Senator" license plates to say that he really was one of us.

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

At the end of the last session, I was going to read my last remarks from the 2005 session. I did not, but now it is appropriate. In 2005, when we gave back $300 million on license plates, I got up and begged not to give it back. I am not going to read my statements today, but I pleaded with the senator from Carson City who also has Virginia City in his district. I said, "Can we could spend the money there to renovate the Piper Opera House or Saint Mary's? Can we invest the money, get two and three time matches from the federal government and improve the business climate of Northern Nevada? Can we put it into the Rainy Day fund, because we are going to need it? Can we build State buildings so we do not have to pay rent?" I pleaded and was told we could not do it. So I went along, and we gave it back. But I did say, "We will be back here in two sessions, and we are going to need that money. We are going to be tapped in two sessions." And here we are. That is pretty prophetic for Schneider to say, but I did not know how busted we were going to be.

We have not been fiscally conservative; we have been fiscally irresponsible in this state. We have lived off development dollars out of Clark County, the boom of Clark County—all that gaming revenue, that sales tax revenue, the building industry down there that just continued to grind on and on. Every decade of the last century, Las Vegas doubled in population. It was the fastest growing city in the United States that was founded in the 1900s. We got addicted to that money coming in. We thought it would always be there and we could be irresponsible. We did not run this place like a business or even like a family runs their house. Hopefully, going forward, we can be more fiscally responsible.

Friday night, at the Lawlor Events Center at UNR, Bishop Gorman High School won the basketball state championship. They beat Canyon Springs 69 to 48. Senator Coffin and I are both graduates of Bishop Gorman. They also won the football championship this year. Gorman is rated 13th in the nation, according to a *USA Today* poll. They have a point guard who is quite outstanding, and he has committed to UNLV, but I think he is going to be the starting safety next year on a football team. The Gorman women's basketball team won the state championship for

the fourth time in five years. They have one senior on that team, Aaryn Ellenberg, who had five three-point baskets. She finished her career with 2,000 points. She is a McDonald All-American, and she will be going to Oklahoma to play basketball. They lost the state championship last year to Centennial, 59 to 58, but they redeemed themselves this year, and I think they will win next year, since all but one starter returned.

Finally, Findlay College Prep at the Henderson International School in Las Vegas is a private prep school. They are rated third in the nation. They are the defending national champion in high school basketball. They have sent young men to Kentucky, UCLA, UNLV—you can name the big basketball schools, and they have sent kids there. Findlay Prep announced they are closing this spring. This will be their last year. It costs $17,000 a year to send a student to Findlay Prep. It has been subsidized by Cliff Findlay, an automobile dealer in Las Vegas; the basketball team all received full scholarships from Mr. Findlay. He could not subsidize it anymore. Every basketball player at that school had to maintain a 3.0-grade point average in his college prep classes or he could not play. They all had tutors.

What I am telling you is that the cost of a really good education is about $17,000 a year per student. The Meadows School and Gorman are in that same price range. Just reflect on the amount we fund education. And these schools only do college prep; they do not deal with "at-risk" kids or kids with learning disabilities.

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

I want to thank everybody here for basically holding my hand through this process. Everyone was very gracious, and I learned a lot. As I told Senator Raggio, it was a million-dollar training exercise for me, and it was well worth it. Probably next session, I will be out in the hallways again. I learned a lot from all of you, and I want to thank you.

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

I want to start by thanking the members of the State Senate, who worked around the clock for weeks since we learned about our nearly billion-dollar budget shortfall. We studied all aspects of the budget; we looked for places to protect and areas to cut, strategically identifying both. Without the agreement we were able to reach, the alternative would have been much worse—across-the-board cuts of more than 20 percent to our children's schools, our colleges and universities, mental health programs and senior and health programs. We worked closely with our Democrat colleagues in the Assembly. I would like to thank Speaker Buckley and Assembly Majority Leader Oceguera, as well as all the members in the Assembly, for their effort to make sure we were able to reach this budget agreement.

I want to thank my colleague and friend Senator Raggio for all of his wisdom and experience, and his steady hand in helping to guide us during these very turbulent times. I value his friendship and the advice and counsel he gives. I also want to thank Assemblywoman Heidi Gansert, the Assembly Minority Leader.

I want to thank the Governor and his staff. They met with us for weeks to reach this agreement. It was a healthy, energetic and sometimes heated exchange of ideas, but it was all toward the result we were able to accomplish.

I want to say that none of this could have been completed without our incredible team of people here at the Legislative Counsel Bureau. Mark Krmpotic, who just started in this new role, has just taken over and fallen right into place, and I want to thank him and the entire Fiscal Division for doing such a wonderful job on behalf of the people of this great state. Our legal team, led by Brenda Erdoes, they do so much behind the scenes, but they always get it right, and we thank them very much. Thanks to our administrative services division, Lorne Malkiewich, the director of the Legislative Counsel Bureau. To our phenomenal front desk staff, thank you very much. To our Sergeant at Arms, thank you for always being there and having what we need when we need it, and making sure the members are where they need to be. To the Secretary of the Senate, thank you very much for helping to organize us to make sure the chamber and all of the functions work so well. We can't say thank you enough.

To you, Mr. President, we appreciate your helping to guide us in these proceedings and being with us all along the way. I also want to recognize the knowledge and the calm demeanor of the

State Budget Director, Andrew Clinger, to whom we owe a great debt. He had to put the Governor's budget proposals together so we could work from them, and I want to thank him and his staff for their hard work.

Through it all, throughout this entire process, we have heard from the people of this State, from thousands of our neighbors at Town Hall meetings held in Las Vegas and Reno, the legislative hearings in this building and in the south. They shared their emails, their phone calls, and their letters. They told us of their hopes and their fears. They have shown their deep commitment to Nevada, and many of us have been moved by the stories they have shared.

We have worked to establish and now reestablish our priorities. None of us got everything he or she wanted, but we have succeeded in protecting as much as possible our children's schools, our colleges and universities, the mental health programs, the health and human services programs, and public safety. And I must emphasize that the $900 million shortfall we dealt with in this special session is dwarfed by the nearly $3.5 billion shortfall projected for the next biennium. Long before this special session began, we talked about seeking solutions to our state's budget troubles. By the middle of this year, we will receive those recommendations to broaden and stabilize Nevada's revenue system via the interim committee we established. Those recommendations will be the foundation the next Legislature will use to solve the projected multi-billion-dollar shortfall and will given Nevada a reliable system to pay for our schools, colleges and universities to come.

And I want to make something clear, as we depart from here today. The sectors of our business community that did not step up to participate in helping us solve our current crisis must step up to be part of the ultimate solution as we move forward. Whether it is mining, gaming, banking, insurance, retailers, manufacturers, no matter. All of us receive state services, and all of us have a shared responsibility to Nevada. I want to borrow a phrase from my friend and colleague from northern Nevada, Senator Townsend. This will be the motto for the next session: "No" is not a plan.

I want to thank those industries that did step up, particularly the mining industry. Those are corporate citizens who care about this state, and I want to thank them for their efforts.

While what we have accomplished during this special session is remarkable, we will not be able to do this again without fundamental changes in how we pay for education and programs that provide care and assistance to seniors, low-income people and the mentally ill, not to mention everyone else in the State of Nevada. We have shown each other in recent weeks that we can craft a thoughtful, responsible solution to a major crisis, and I am confident we will use that approach in the next legislative session.

One final thought: As my colleague Senator Raggio said, we are losing something very special with the end of this session: the longtime senators, Bob Coffin, my able lieutenant Senator Care, Senator Mathews, the cochair of Finance, Senator Carlton, Senator Townsend, Senator Washington, and Senator Amodei. I cannot tell you how much it means to us to lose us and not have you part of this body and this process. If there was a way, I would probably change my mind on term limits, because our State needs your experience, your wisdom and your knowledge more now than ever before. I hope you will, in whatever role you choose, continue to stay involved in this process.

I want to thank each of you for the time we have spent together. I am richer for that experience and have learned something from each and every one of you. I will miss you on this floor, though I hope we will not be back any time soon, and I will always be grateful for the time we have spent together. You have shown we can solve a very difficult problem in a bipartisan manner, and for that I thank you.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 3, 4; 5; Senate Concurrent Resolution No. 1; Assembly Bills Nos. 2, 6.

REMARKS FROM THE FLOOR

Senator Horsford requested that the following letter be entered in the Journal.

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

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

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

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

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

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

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

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

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 Jenny Care.

MOTIONS, RESOLUTIONS AND NOTICES

Mr. President appointed Senators Copening, Parks and Amodei as a committee to wait upon the Assembly and to inform that honorable body that the Senate is ready to adjourn *sine die*.

Mr. President appointed Senators Lee, Wiener and Olsen as a committee to wait upon His Excellency, Jim Gibbons, Governor of the State of Nevada, and to inform him that the Senate is ready to adjourn *sine die*.

A committee from the Assembly, consisting of, Assemblymen Bobzien, Smith and Goicoechea appeared before the bar of the Senate and announced that the Assembly is ready to adjourn *sine die*.

Senator Copening reported that her committee had informed the Assembly that the Senate is ready to adjourn *sine die*.

Senator Lee reported that his committee had informed the Governor that the Senate is ready to adjourn *sine die*.

Senator Steven A. Horsford moved that the 26th Special Session of the Senate of the Legislature of the State of Nevada adjourn *sine die*.

Motion carried

Senate adjourned *sine die* at 2:13 a.m.

Approved:

BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

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