

SENATE CONCURRENT RESOLUTION NO. 1—SENATORS ROBERSON,
HAMMOND, BROWER, GUSTAVSON, FARLEY; GOICOECHEA,
HARDY, HARRIS, KIECKHEFER, LIPPARELLI AND
SETTELMAYER

DECEMBER 19, 2015

Read and Adopted

SUMMARY—Declares and expresses the Legislature’s purpose and
intent in enacting Senate Bill No. 302 of the 78th
Session of the Legislature. (BDR R-11)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE CONCURRENT RESOLUTION—Declaring and
expressing the Legislature’s purpose and intent in
enacting Senate Bill No. 302 of the 78th Session of the
Legislature.

WHEREAS, Pursuant to Sections 1, 3 and 4 of Article 4 of the
Nevada Constitution, the 78th Legislature of the State of Nevada
came into legal existence the day next after the election of its
members at the general election held on November 4, 2014, and
became invested with the legislative authority of this State; and

WHEREAS, Pursuant to Sections 1, 3 and 4 of Article 4 of the
Nevada Constitution, the 78th Legislature of the State of Nevada is
a continuing body that is the repository of the legislative authority of
this State until the day next after the election of the members of the
79th Legislature of the State of Nevada at the general election held
on November 8, 2016; and

WHEREAS, Pursuant to Sections 2 and 2A of Article 4 and
Section 9 of Article 5 of the Nevada Constitution, the 78th
Legislature of the State of Nevada may exercise the legislative
authority of this State and transact legislative business when
convened in a biennial regular session as authorized by the Nevada
Constitution or when convened in a special session as authorized by
the Nevada Constitution; and

WHEREAS, Courts have stated that, because a state legislature is
a continuing body during the period between the general election of



1 its members, the legal existence of the state legislature continues
2 after the adjournment sine die of its biennial regular session and,
3 when a special session is convened during the period of its
4 continuing legal existence, the state legislature that convenes during
5 the special session is the same state legislature that convened during
6 the biennial regular session; and

7 WHEREAS, Courts have stated that, when determining whether a
8 state legislature is authorized to transact legislative business at
9 a regular or special session, the state constitution does not serve as a
10 grant of specific enumerated powers but rather acts as a restriction
11 upon the general powers of the state legislature, so courts do not
12 look to what the state constitution authorizes but to what it
13 prohibits; and

14 WHEREAS, Courts have stated that, when convened in a regular
15 session, a state legislature possesses all general powers of
16 sovereignty that are inherent in the people, unless those powers are
17 specifically, explicitly and definitely restricted by clear
18 constitutional limitations; and

19 WHEREAS, Courts have stated that, when convened in a special
20 session, the powers of a state legislature are as broad as its general
21 powers in a regular session, except where specifically, explicitly and
22 definitely restricted by clear constitutional limitations; and

23 WHEREAS, Courts have stated that, when constitutional
24 limitations are imposed on a state legislature in a regular or special
25 session, those limitations must be strictly construed in favor of the
26 general powers of the state legislature to transact legislative
27 business, those limitations are not to be extended to include matters
28 which are not expressly and explicitly covered by the terms of such
29 limitations and those limitations are not to be given effect as against
30 the general powers of the state legislature, unless such limitations
31 clearly inhibit the act in question; and

32 WHEREAS, Section 2A of Article 4 of the Nevada Constitution
33 states that, at a special session convened by the members of the
34 Legislature by petition, "the Legislature shall not introduce,
35 consider or pass any *bills* except those related to the business
36 specified in the petition and those necessary to provide for the
37 expenses of the session"; and

38 WHEREAS, Section 9 of Article 5 of the Nevada Constitution
39 states that, at a special session convened by the Governor by
40 proclamation, "the Legislature shall not introduce, consider or pass
41 any *bills* except those related to the business for which the
42 Legislature has been specially convened and those necessary to
43 provide for the expenses of the session"; and

44 WHEREAS, The plain language of Section 2A of Article 4 and
45 Section 9 of Article 5 of the Nevada Constitution specifically,



1 explicitly and definitely limits only the general powers of the
2 Legislature to introduce, consider or pass any "bills" at a special
3 session but does not specifically, explicitly and definitely limit the
4 general powers of the Legislature to introduce, consider or pass any
5 "resolutions" at a special session; and

6 WHEREAS, Sections 16, 18, 23 and 35 of Article 4 of the Nevada
7 Constitution establish a clear distinction between "bills" and
8 "resolutions" in the state legislative process, and when the Framers
9 of the Nevada Constitution intended for a provision to impose
10 limitations on both "bills" and "resolutions," the Framers expressly
11 said so by using both terms in the provision; and

12 WHEREAS, Because the plain language of Section 2A of Article
13 4 and Section 9 of Article 5 of the Nevada Constitution specifically,
14 explicitly and definitely limits only the general powers of the
15 Legislature to introduce, consider or pass any "bills" at a special
16 session, the general powers of the Legislature to introduce, consider
17 or pass any "resolutions" at a special session are as broad as its
18 general powers at a regular session; and

19 WHEREAS, Courts have stated that, when the Framers of the
20 Nevada Constitution drafted the provisions governing the state
21 legislative process, they were influenced by the customs and
22 practices of the British Parliament and the United States Congress
23 which reflect the common parliamentary law that has been
24 developed and applied by legislative and parliamentary bodies for
25 centuries; and

26 WHEREAS, Under the common parliamentary law, a state
27 legislature may use a concurrent resolution to declare and express
28 the purpose and intent of the state legislature and to provide
29 direction, guidance and advice to its committees and members in
30 performing their functions and duties; and

31 WHEREAS, Courts have stated that, although concurrent
32 resolutions do not have the force and effect of law, they are entitled
33 to respectful consideration by the courts; and

34 WHEREAS, Courts have stated that, because a state legislature is
35 a continuing body during the period between the general election of
36 its members, when there is a question regarding the state
37 legislature's purpose and intent in passing a law and there is an
38 opportunity in an ensuing regular or special session for the same
39 state legislature to provide guidance regarding its original purpose
40 and intent during the period of its continuing legal existence, the
41 state legislature has the power to do so, and its guidance is entitled
42 to interpretative weight because such guidance throws light upon its
43 original purpose and intent in passing the law in the first instance;
44 and



1 WHEREAS, Under Section 1 of Article 3 of the Nevada
2 Constitution, the Framers of the Nevada Constitution expressly
3 incorporated the doctrine of separation of powers into the Nevada
4 Constitution; and

5 WHEREAS, Under the doctrine of separation of powers
6 incorporated in Section 1 of Article 3 of the Nevada Constitution,
7 the primary power of the Legislative Branch is to exercise
8 legislative power, which is the power of the people's law-making
9 representative body to frame and enact laws and to amend or repeal
10 them; and

11 WHEREAS, Under the doctrine of separation of powers
12 incorporated in Section 1 of Article 3 of the Nevada Constitution,
13 the primary power of the Executive Branch is to exercise executive
14 power, which is the power of agencies and officers of the Executive
15 Branch to carry out and enforce the laws enacted by the Legislative
16 Branch; and

17 WHEREAS, Under the doctrine of separation of powers
18 incorporated in Section 1 of Article 3 of the Nevada Constitution,
19 the Legislative Branch may exercise the legislative power to pass
20 laws delegating to agencies and officers of the Executive Branch the
21 power to adopt regulations to carry out and enforce the laws enacted
22 by the Legislative Branch, so long as the regulations conform with
23 statutory authority and carry out legislative intent; and

24 WHEREAS, Under the doctrine of separation of powers
25 incorporated in Section 1 of Article 3 of the Nevada Constitution,
26 the power to issue final and binding interpretations of the laws
27 enacted by the Legislative Branch is generally regarded as a judicial
28 power because it is the province and duty of the Judicial Branch to
29 interpret the law and determine its meaning in justiciable cases or
30 controversies; and

31 WHEREAS, Under the doctrine of separation of powers
32 incorporated in Section 1 of Article 3 of the Nevada Constitution,
33 the power to issue final and binding interpretations of the validity of
34 regulations adopted by agencies and officers of the Executive
35 Branch is generally regarded as a judicial power because the
36 determination of whether regulations are valid presents a question of
37 statutory interpretation as to whether the regulations conform with
38 statutory authority and carry out legislative intent; and

39 WHEREAS, Under the doctrine of separation of powers
40 incorporated in Section 1 of Article 3 of the Nevada Constitution,
41 the Legislative Branch cannot exercise judicial power "except in the
42 cases expressly directed or permitted in this [C]onstitution"; and

43 WHEREAS, Under the doctrine of separation of powers
44 incorporated in Section 1 of Article 3 of the Nevada Constitution,
45 the Legislature is expressly permitted to designate a legislative



1 body, which is composed of members of the Senate and Assembly
2 and is authorized to act on behalf of both Houses of the Legislature,
3 to exercise limited judicial power by reviewing regulations adopted
4 by agencies and officers of the Executive Branch and determining
5 whether the regulations conform with statutory authority and carry
6 out legislative intent; and

7 WHEREAS, Under the doctrine of separation of powers
8 incorporated in Section 1 of Article 3 of the Nevada Constitution,
9 the power expressly granted to the Legislative Branch to review
10 regulations was not intended to supplant entirely the power of the
11 Judicial Branch to review regulations; and

12 WHEREAS, Under the doctrine of separation of powers
13 incorporated in Section 1 of Article 3 of the Nevada Constitution,
14 there is a system of concurrent and shared power under which both
15 the Legislative Branch and the Judicial Branch have the power to
16 review regulations to determine whether they conform with
17 statutory authority and carry out legislative intent; and

18 WHEREAS, The Legislature has statutorily codified this
19 concurrent and shared power between the Legislative Branch and
20 the Judicial Branch in the Nevada Administrative Procedure Act
21 (APA) in chapter 233B of NRS; and

22 WHEREAS, Under the APA, the Legislative Commission and its
23 Subcommittee to Review Regulations are authorized by law to
24 review regulations before they become effective to determine
25 whether the agency or officer of the Executive Branch has complied
26 with the regulation-making requirements of the APA and whether
27 the regulations conform with statutory authority and carry out
28 legislative intent; and

29 WHEREAS, Under the APA, the Judicial Branch is authorized by
30 law to review regulations after they become effective to determine
31 whether the agency or officer of the Executive Branch has complied
32 with the regulation-making requirements of the APA and whether
33 the regulations conform with statutory authority and carry out
34 legislative intent; and

35 WHEREAS, Because the power to review regulations in Nevada
36 is constitutionally and statutorily shared by the Legislative Branch
37 and the Judicial Branch, the exercise of that power by either branch
38 must be afforded the greatest amount of respect and deference as
39 possible by the other branch; and

40 WHEREAS, When the Legislative Commission or its
41 Subcommittee to Review Regulations determines that regulations
42 conform with statutory authority and carry out legislative intent, the
43 Judicial Branch should give that determination the greatest possible
44 amount of respect and deference; and



1 WHEREAS, During the biennial regular session in 2015, the 78th
2 Legislature of the State of Nevada passed, and the Governor
3 approved, Senate Bill No. 302 (S.B. 302), chapter 332, Statutes of
4 Nevada 2015, at page 1824, to provide greater educational choices
5 to pupils through a program, commonly known as the education
6 savings account program, which allows the parents of certain pupils
7 in Nevada to establish an education savings account with a portion
8 of the State's educational funding of the public school system and to
9 pay for certain expenses incurred by the parents for educating those
10 pupils outside of the public school system; and

11 WHEREAS, For the parents of certain pupils in Nevada to
12 establish an education savings account, S.B. 302 states that the pupil
13 must be required by NRS 392.040 to attend a public school and
14 must have been enrolled in a public school in this State for at least
15 100 school days without interruption during the period immediately
16 preceding the establishment of the education savings account; and

17 WHEREAS, Under Nevada's education laws, NRS 392.040 and
18 392.070 generally require, with certain exceptions, that all children
19 between 7 and 18 years of age in this State must attend a public
20 school, enroll in a private school or be homeschooled; and

21 WHEREAS, S.B. 302 does not state in express terms how the
22 education savings account program is to be applied to pupils
23 younger than 7 years of age who are not required by statute to attend
24 school but who are eligible to be enrolled in a public school; and

25 WHEREAS, Under Nevada's education laws, the count of pupils
26 for apportionment purposes for the State's educational funding
27 includes pupils younger than 7 years of age who are enrolled in a
28 public school; and

29 WHEREAS, Under Nevada's education laws, the basic support of
30 each school district must be computed by including pupils younger
31 than 7 years of age who are enrolled in a public school; and

32 WHEREAS, Based on Nevada's education laws, it is the public
33 policy of this State to include pupils younger than 7 years of age
34 who are enrolled in a public school as part of the equation when the
35 State calculates and distributes educational funding to each school
36 district in Nevada; and

37 WHEREAS, By including such pupils in the State's educational
38 funding, the Legislature expressed its purpose and intent to allow
39 those funds to be used by parents to establish education savings
40 accounts for pupils younger than 7 years of age who are not required
41 by statute to attend school but who are eligible to enroll in a public
42 school because providing greater educational choices to such
43 younger pupils in their critically important formative years is
44 essential to promoting their educational success in later years; and



1 WHEREAS, S.B. 302 does not state in express terms how the
2 education savings account program is to be applied to pupils of
3 active duty members of the military who are stationed at military
4 installations in Nevada; and

5 WHEREAS, In 2009, the Legislature enacted the Interstate
6 Compact on Educational Opportunity for Military Children, codified
7 as NRS 392C.010, to remove barriers to educational success for
8 pupils of active duty members of the military who are stationed at
9 military installations in Nevada and to facilitate the qualification,
10 eligibility and enrollment of those pupils in educational programs so
11 that they are not disadvantaged in their educational opportunities
12 because of moving to or living in Nevada; and

13 WHEREAS, Based on the Interstate Compact on Educational
14 Opportunity for Military Children, it is the public policy of this
15 State to remove any barriers to educational success in educational
16 programs like the education savings account program for pupils of
17 active duty members of the military who are stationed at military
18 installations in Nevada and to facilitate the qualification, eligibility
19 and enrollment of those pupils in educational programs like the
20 education savings account program so that they are not
21 disadvantaged in their educational opportunities because of moving
22 to or living in Nevada; and

23 WHEREAS, By enacting the Interstate Compact on Educational
24 Opportunity for Military Children, the Legislature expressed its
25 purpose and intent to give active duty members of the military who
26 are stationed at military installations in Nevada a full and immediate
27 opportunity to establish education savings accounts for their
28 children to remove any barriers to their educational success and to
29 facilitate their qualification, eligibility and enrollment in the
30 education savings account program so that they are not
31 disadvantaged in their educational opportunities because of moving
32 to or living in Nevada; and

33 WHEREAS, Courts have stated that the controlling factor in
34 statutory interpretation is to ascertain the purpose and intent of the
35 Legislature in enacting the statute and to adopt an interpretation that
36 best captures the Legislature's objectives; and

37 WHEREAS, Courts have stated that, because legislative purpose
38 and intent is the controlling factor in statutory interpretation, courts
39 should construe the statute with the view of promoting rather than
40 defeating the legislative policies behind it and should adopt an
41 interpretation that is in line with what reason and public policy
42 would indicate the Legislature intended; and

43 WHEREAS, Courts have stated that, because legislative purpose
44 and intent is the controlling factor in statutory interpretation, when
45 the Legislature enacts the statute for a beneficial public purpose,



1 courts should construe the statute liberally in its broadest possible
2 sense in order to carry out the beneficial public purpose and fully
3 achieve the benefits intended by the Legislature; and

4 WHEREAS, Courts have stated that, because legislative purpose
5 and intent is the controlling factor in statutory interpretation, courts
6 should not give the statute any meaning which conflicts with the
7 Legislature's purpose and intent in enacting the statute or which
8 violates the spirit of the statute or leads to absurd or unreasonable
9 results; and

10 WHEREAS, Courts have stated that, because legislative purpose
11 and intent is the controlling factor in statutory interpretation, courts
12 should give the statute the effect intended by the Legislature even if
13 the statute is inartfully drawn or worded; and

14 WHEREAS, Courts have stated that, because legislative purpose
15 and intent is the controlling factor in statutory interpretation, when a
16 literal reading of the statute conflicts with the Legislature's purpose
17 and intent in enacting the statute, the Legislature's purpose and
18 intent should prevail over the literal sense of the words; and

19 WHEREAS, Courts have stated that they will presume the
20 Legislature enacted each statute with full knowledge of all other
21 statutes, they will infer legislative purpose and intent by reading
22 each statute in the context of all other statutes and they will strive to
23 interpret each statute in harmony with all other statutes so as to
24 render the statutes compatible whenever possible; now, therefore, be
25 it

26 RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE
27 ASSEMBLY CONCURRING, That the 78th Legislature of the State of
28 Nevada, which enacted Senate Bill No. 302, chapter 332, Statutes of
29 Nevada 2015, at page 1824, during the biennial regular session in
30 2015, hereby exercises its power to declare and express its original
31 purpose and intent in enacting S.B. 302 with respect to:

32 1. Pupils younger than 7 years of age who are not required by
33 statute to attend school but who are eligible to be enrolled in a
34 public school; and

35 2. Pupils of active duty members of the military who are
36 stationed at military installations in Nevada; and be it further

37 RESOLVED, That the Legislature enacted S.B. 302 for a
38 beneficial public purpose to provide greater educational choices to
39 pupils through the education savings account program; and be it
40 further

41 RESOLVED, That in enacting S.B. 302, the original purpose and
42 intent of the Legislature was to:

43 1. Have S.B. 302 interpreted in harmony with Nevada's
44 education laws and in line with the public policy of this State to
45 include pupils younger than 7 years of age who are enrolled in a



1 public school as part of the equation when the State calculates and
2 distributes educational funding to each school district in Nevada;
3 and

4 2. Allow education savings accounts to be established for
5 pupils younger than 7 years of age who are not required by statute to
6 attend school but who are eligible to be enrolled in a public school,
7 regardless of whether such pupils have been enrolled in a public
8 school in this State for at least 100 school days without interruption
9 during the period immediately preceding the establishment of the
10 education savings account; and be it further

11 RESOLVED, That in enacting S.B. 302, the original purpose and
12 intent of the Legislature was to:

13 1. Have S.B. 302 interpreted in harmony with the Interstate
14 Compact on Educational Opportunity for Military Children, codified
15 as NRS 392C.010, and in line with the public policy of this State to
16 remove any barriers to educational success in educational programs
17 like the education savings account program for pupils of active duty
18 members of the military who are stationed at military installations in
19 Nevada and to facilitate the qualification, eligibility and enrollment
20 of those pupils in educational programs like the education savings
21 account program so that they are not disadvantaged in their
22 educational opportunities because of moving to or living in Nevada;
23 and

24 2. Allow education savings accounts to be established for
25 pupils of active duty members of the military who are stationed at
26 military installations in Nevada, regardless of whether such pupils
27 have been enrolled in a public school in this State for at least 100
28 school days without interruption during the period immediately
29 preceding the establishment of the education savings account; and
30 be it further

31 RESOLVED, That because the State Treasurer is required by S.B.
32 302 to adopt any regulations necessary or convenient to carry out
33 the education savings account program, the Legislature hereby
34 encourages the State Treasurer to adopt regulations to carry out the
35 original purpose and intent of the Legislature in enacting S.B. 302;
36 and be it further

37 RESOLVED, That the Legislature hereby exercises its power to
38 provide direction, guidance and advice regarding its original
39 purpose and intent in enacting S.B. 302 to the Legislative
40 Commission and its Subcommittee to Review Regulations in
41 performing their functions and duties under Section 1 of Article 3 of
42 the Nevada Constitution and the Nevada Administrative Procedure
43 Act to review any regulations adopted by the State Treasurer to
44 carry out the education savings account program and to determine



1 whether the regulations conform with statutory authority and carry
2 out legislative intent; and be it further

3 RESOLVED, That if the Legislative Commission or its
4 Subcommittee to Review Regulations determines that any
5 regulations adopted by the State Treasurer to carry out the education
6 savings account program conform with statutory authority and carry
7 out legislative intent, the Legislature hereby requests that the
8 Judicial Branch give that determination the greatest possible amount
9 of respect and deference because the power to review regulations in
10 Nevada is constitutionally and statutorily shared by the Legislative
11 Branch and the Judicial Branch under Section 1 of Article 3 of the
12 Nevada Constitution and the Nevada Administrative Procedure Act;
13 and be it further

14 RESOLVED, That the Secretary of the Senate prepare and
15 transmit a copy of this resolution to the Legislative Commission and
16 its Subcommittee to Review Regulations, the Governor and the
17 State Treasurer.



