

Senate Concurrent Resolution No. 1—Senators Roberson, Hammond, Brower, Gustavson, Farley; Goicoechea, Hardy, Harris, Kieckhefer, Lipparelli and Settelmeyer

FILE NUMBER.....

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

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

WHEREAS, Courts have stated that, when convened in a regular session, a state legislature possesses all general powers of



sovereignty that are inherent in the people, unless those powers are specifically, explicitly and definitely restricted by clear constitutional limitations; and

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

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

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

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

WHEREAS, The plain language of Section 2A of Article 4 and Section 9 of Article 5 of the Nevada Constitution specifically, explicitly and definitely limits only the general powers of the Legislature to introduce, consider or pass any "bills" at a special session but does not specifically, explicitly and definitely limit the general powers of the Legislature to introduce, consider or pass any "resolutions" at a special session; and

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

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



explicitly and definitely limits only the general powers of the Legislature to introduce, consider or pass any "bills" at a special session, the general powers of the Legislature to introduce, consider or pass any "resolutions" at a special session are as broad as its general powers at a regular session; and

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

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

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

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

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

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

WHEREAS, Under the doctrine of separation of powers incorporated in Section 1 of Article 3 of the Nevada Constitution,



the primary power of the Executive Branch is to exercise executive power, which is the power of agencies and officers of the Executive Branch to carry out and enforce the laws enacted by the Legislative Branch; and

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

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

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

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

WHEREAS, Under the doctrine of separation of powers incorporated in Section 1 of Article 3 of the Nevada Constitution, the Legislature is expressly permitted to designate a legislative body, which is composed of members of the Senate and Assembly and is authorized to act on behalf of both Houses of the Legislature, to exercise limited judicial power by reviewing regulations adopted by agencies and officers of the Executive Branch and determining whether the regulations conform with statutory authority and carry out legislative intent; and

WHEREAS, Under the doctrine of separation of powers incorporated in Section 1 of Article 3 of the Nevada Constitution, the power expressly granted to the Legislative Branch to review



regulations was not intended to supplant entirely the power of the Judicial Branch to review regulations; and

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

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

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

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

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

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

WHEREAS, During the biennial regular session in 2015, the 78th Legislature of the State of Nevada passed, and the Governor approved, Senate Bill No. 302 (S.B. 302), chapter 332, Statutes of Nevada 2015, at page 1824, to provide greater educational choices to pupils through a program, commonly known as the education savings account program, which allows the parents of certain pupils in Nevada to establish an education savings account with a portion of the State's educational funding of the public school system and to



pay for certain expenses incurred by the parents for educating those pupils outside of the public school system; and

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

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

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

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

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

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

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

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

WHEREAS, In 2009, the Legislature enacted the Interstate Compact on Educational Opportunity for Military Children, codified as NRS 392C.010, to remove barriers to educational success for



pupils of active duty members of the military who are stationed at military installations in Nevada and to facilitate the qualification, eligibility and enrollment of those pupils in educational programs so that they are not disadvantaged in their educational opportunities because of moving to or living in Nevada; and

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

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

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

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

WHEREAS, Courts have stated that, because legislative purpose and intent is the controlling factor in statutory interpretation, when the Legislature enacts the statute for a beneficial public purpose, courts should construe the statute liberally in its broadest possible sense in order to carry out the beneficial public purpose and fully achieve the benefits intended by the Legislature; and

WHEREAS, Courts have stated that, because legislative purpose and intent is the controlling factor in statutory interpretation, courts



should not give the statute any meaning which conflicts with the Legislature's purpose and intent in enacting the statute or which violates the spirit of the statute or leads to absurd or unreasonable results; and

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

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

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

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

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

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

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

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

1. Have S.B. 302 interpreted in harmony with Nevada's education laws and in line with the public policy of this State to include pupils younger than 7 years of age who are enrolled in a public school as part of the equation when the State calculates and distributes educational funding to each school district in Nevada; and



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

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

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

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

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

RESOLVED, That the Legislature hereby exercises its power to provide direction, guidance and advice regarding its original purpose and intent in enacting S.B. 302 to the Legislative Commission and its Subcommittee to Review Regulations in performing their functions and duties under Section 1 of Article 3 of the Nevada Constitution and the Nevada Administrative Procedure Act to review any regulations adopted by the State Treasurer to carry out the education savings account program and to determine whether the regulations conform with statutory authority and carry out legislative intent; and be it further



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

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



