

**THE SIXTY-FOURTH DAY**

---

CARSON CITY (Monday), April 11, 2011

Senate called to order at 11:11 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by Elder Dinah Pete of the Washoe Tribe of Nevada and California, who gave a reading of the Lord's Prayer in Native Washoe.

I thank you for letting me be here today. For each and every one of you, I thank you all. The prayer is similar to the Lord's Prayer plus all of the things everyone has in their minds. It is going to be all good for each and every one of you in this room.

Thank you.

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.

## REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 368, 413, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 60, 198, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

*Mr. President:*

Your Committee on Education, to which was referred Senate Bill No. 196, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MO DENIS, *Chair*

*Mr. President:*

Your Committee on Health and Human Services, to which was referred Senate Bill No. 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which were referred Senate Bills Nos. 10, 112, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Health and Human Services, to which was referred Senate Bill No. 115, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

ALLISON COPENING, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which was referred Senate Bill No. 284, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Judiciary, to which were referred Senate Bills Nos. 24, 127, 159, 180, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

VALERIE WIENER, *Chair*

*Mr. President:*

Your Select Committee on Economic Growth and Employment, to which was re-referred Assembly Bill No. 144, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RUBEN J. KIHUEN, *Chair*

*Mr. President:*

Your Committee on Transportation, to which was referred Assembly Bill No. 30, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SHIRLEY A. BREEDEN, *Chair*

MESSAGES FROM THE GOVERNOR  
STATE OF NEVADA  
OFFICE OF THE GOVERNOR  
CARSON CITY, NEVADA 89701

April 7, 2011

MAJORITY LEADER STEVEN HORSFORD  
SPEAKER JOHN OCEGUERA  
401 SOUTH CARSON STREET  
CARSON CITY, NV 89701

DEAR SENATOR HORSFORD AND SPEAKER OCEGUERA:

On February 7, 2011, Initiative Petition 1 ("the petition") was introduced in the Assembly. The petition is entitled:

AN ACT relating to taxation; requiring the establishment of an arena district in certain larger counties; requiring the imposition of an additional sales and use tax in such a district; providing for the use of the proceeds of such a tax for the construction, improvement, equipment, operation and maintenance of a sports and entertainment arena through public and private cooperation; and providing other matters properly relating thereto.

On March 23, 2011, Senate Concurrent Resolution 4 was enrolled and delivered to the Secretary of State, thus reflecting the Legislature's rejection of the petition.

Article 19 of our State's Constitution requires that in the event the Legislature rejects an initiative petition proposing a statutory change or constitutional amendment, "the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election."

The plain meaning of Article 19 provides for a scenario in which, upon rejection of an initiative petition by the Legislature, the Governor has the discretion to recommend an alternative measure on the same subject. Upon doing so, and only upon doing so, the Legislature may propose an alternative measure, setting it before me for my approval or disapproval. If approved, the proposal shall be submitted to the people for a vote.

That my recommendation is a prerequisite to the Legislature's proposal is reflected in the legislative history of Article 19. Prior to 1962, Article 19 provided only that, upon rejection by the Legislature, the Legislature "may, with the approval of the governor, propose a different measure on the same subject ...."

In the general election of 1962, the people chose to change the procedure in the event of a legislative rejection, requiring not only my approval of the Legislature's ultimate proposal, but my recommendation to make such a proposal as well.

On March 28, 2011, Senate Bill 495 was introduced in the Senate, and referred to the Senate Committee on Revenue, as a competing measure with the petition. SB 495 is entitled:

AN ACT relating to taxation; proposing a competing measure to Initiative Petition No. 1 by requiring a uniform and equal rate of sales and use tax in a county and prohibiting the creation of special districts in which a higher sales and use tax rate applies in a certain portion of the county; and providing other matters properly relating thereto.

In the exercise of my constitutional authority under Article 19, Section 2 of our State's constitution, I hereby recommend to the Legislature SB 495 as a different measure on the same subject as the petition. My recommendation today in no way undermines my constitutional authority to disapprove of the measure once it is ultimately proposed by the Legislature. Rather, it reflects the fact that I believe it is important for the people of Nevada to be afforded options when passing judgment on important questions of public policy.

Sincere regards,  
BRIAN SANDOVAL  
*Governor*

## MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, April 8, 2011

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bills Nos. 306, 322, 451, 464.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 2, 152, 156.

MATTHEW BAKER  
*Assistant Chief Clerk of the Assembly*

COMMUNICATIONS  
STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

April 11, 2011

SENATOR STEVEN A. HORSFORD, MAJORITY LEADER OF THE SENATE  
ASSEMBLYMAN JOHN OCEGUERA, SPEAKER OF THE ASSEMBLY  
LEGISLATIVE BUILDING  
401 S. CARSON STREET  
CARSON CITY, NV 89701

DEAR SENATOR HORSFORD AND SPEAKER OCEGUERA:

You have asked this office a question relating to the constitutional procedure for the Legislature to propose a legislative measure to compete on the general election ballot with an initiative petition that proposes a statute or an amendment to a statute (statutory initiative). In particular, you have asked whether the Governor's recommendation to the Legislature of a competing measure is a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the *Nevada Constitution*.

Your question has arisen because of a letter Governor Brian Sandoval sent to Legislative leadership on April 7, 2011. In his letter, the Governor contends that his "recommendation is a prerequisite" to the Legislature's introduction, consideration and passage of a legislative measure to compete on the 2012 general election ballot with Initiative Petition No. 1 (I.P. 1), which was circulated under the name "Building an Arena for a Stronger Future."

After examining relevant provisions of the *Nevada Constitution*, reviewing historical evidence and prior legislative practice and applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor's recommendation to the Legislature of a competing measure is not a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the *Nevada Constitution*. Furthermore, because this issue involves the interpretation of a constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

**BACKGROUND**

Under the *Nevada Constitution*, when a statutory initiative has met all the requirements for circulation and has been proposed by the required number of registered voters, the Secretary of State must transmit the statutory initiative to the Legislature when it convenes in regular session. Nev. Const. Art. 19, § 2(3). If the statutory initiative is enacted by the Legislature without change or amendment within 40 days and approved by the Governor in the same manner as other statutes, the statutory initiative becomes law. Id. If the statutory initiative is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State must submit the question of approval or disapproval of the statutory initiative to the voters at the next general election. Id.

If the statutory initiative will be submitted to the voters at the next general election, the Legislature may propose a different legislative measure on the same subject to compete on the ballot with the statutory initiative. Id. Specifically, Article 19, Section 2(3) provides:

If the Legislature rejects such proposed statute or amendment, *the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject*, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election.

Nev. Const. Art. 19, § 2(3) (emphasis added).

On February 7, 2011, the Secretary of State transmitted I.P. 1 to the Legislature when it convened the Seventy-sixth Regular Session. On March 18, 2011, the Legislature adopted Senate Concurrent Resolution No. 4, which rejected the statutory initiative and expressed the Legislature's intent to "to propose a competing measure for submission to the voters on the November 2012 General Election ballot." On March 28, 2011, without the Governor's recommendation, the Senate introduced Senate Bill No. 495 (S.B. 495), which proposes a competing measure to I.P. 1.

On April 7, 2011, the Governor sent a letter to legislative leadership stating that "I hereby recommend to the Legislature S.B. 495 as a different measure on the same subject as the petition." The Governor also expressed a legal opinion that his "recommendation is a prerequisite" to the Legislature's introduction, consideration and passage of a legislative measure to compete on the 2012 General Election ballot with I.P. 1. The Governor explained his legal opinion as follows:

The plain meaning of Article 19 provides for a scenario in which, upon rejection of an initiative petition by the Legislature, the Governor has the discretion to recommend an alternative measure on the same subject. Upon doing so, *and only upon doing so*, the Legislature may propose an alternative measure, setting it before me for my approval or disapproval. If approved, the proposal shall be submitted to the people for a vote.

That my *recommendation is a prerequisite to the Legislature's proposal* is reflected in the legislative history of Article 19. Prior to 1962, Article 19 provided only that, upon rejection by the Legislature, the Legislature "may, with the approval of the governor, propose a different measure on the same subject . . ."

In the General Election of 1962, the people chose to change the procedure in the event of a legislative rejection, requiring not only my approval of the Legislature's ultimate proposal, but my recommendation to make such a proposal as well.

(Emphasis added.)

**DISCUSSION**

The *Nevada Constitution* vests the state's legislative power in the Legislature. Nev. Const. Art. 4, § 1; *Comm'n on Ethics v. Hardy*, 125 Nev. Adv. Op. 27, 212 P.3d 1098, 1103 (2009). Because the legislative power of this state is vested in the Legislature, the Governor cannot exercise legislative power unless the Governor's exercise of that power is *expressly* permitted by the Constitution. Nev. Const. Art. 3, § 1; see *State of Nev. Employees Ass'n v. Daines*, 108 Nev. 15, 21 (1992); *Galloway v. Truesdell*, 83 Nev. 13, 20-21 (1967). In other words, under the

separation of powers in the *Nevada Constitution*, the Governor cannot exercise legislative power by implication. Furthermore, in the absence of *express* constitutional authority, the Governor may not interfere with the Legislature's exercise of its core legislative functions, including the introduction, consideration and passage of legislation. See *Hardy*, 212 P.3d at 1103-06; *Heller v. Legislature*, 120 Nev. 456, 466 (2004).

Under Article 5, Section 10 of the *Nevada Constitution*, the Governor is given the power to "recommend such measures as he may deem expedient". However, the Governor's power to recommend legislation under Article 5, Section 10 does not give the Governor any power to originate or introduce legislation in the Legislature because that is a legislative power. See 1 Thomas M. Cooley, *Constitutional Limitations* 325 (8th ed. 1927) (explaining that the Governor may recommend legislation but "cannot originate or introduce bills."); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 632 (1952) (Douglas, J., concurring) ("The power to recommend legislation, granted to the President, serves only to emphasize that it is his function to recommend and that it is the function of the Congress to legislate."). Thus, under the separation of powers in the legislative process, the Governor and the Legislature each have separate and mutually exclusive powers when it comes to recommending and proposing legislative measures. The Governor may recommend a legislative measure to the Legislature, but the Legislature may decline to propose the legislative measure despite the Governor's recommendation. Conversely, the Governor may choose not to recommend a legislative measure to the Legislature, but the Legislature may propose the legislative measure without the Governor's recommendation.

Given how the legislative process traditionally operates under the separation of powers, an interpretation of Article 19, Section 2(3) which makes the Governor's power to recommend a competing measure a prerequisite or condition precedent to legislative action would be a significant departure from traditional separation-of-powers principles. When the Legislature proposes a competing measure, the Legislature is exercising legislative power because it is proposing a law to the voters through the passage of a bill. See Nev. Const. Art. 4, § 23 ("no law shall be enacted except by bill."). Consequently, when the Legislature proposes a competing measure, it is performing its core legislative function of introducing, considering and passing legislation. Because the Legislature's proposal of a competing measure may only be accomplished through the passage of a bill, the Legislature adheres to the traditional legislative process prescribed by Article 4 of the *Nevada Constitution* when it introduces, considers and passes a competing measure.

Despite the fact that a competing measure is processed in the same manner as other legislation, the Governor contends that his power to recommend a competing measure under Article 19, Section 2(3) is greater than his power to recommend legislation under Article 5, Section 10 in the traditional legislative process. For such a deviation from traditional separation-of-powers principles to be true, the provisions of Article 19, Section 2(3) would need to state, in clear and unmistakable terms, that the Governor's power to recommend a competing measure is an *express* condition precedent to the Legislature's exercise of its legislative power. Such an extraordinary restriction on legislative power could not arise by implication. Therefore, to answer your question, we must review the language of Article 19, Section 2(3) to determine whether it creates an *express* condition precedent which limits the Legislature's power to propose a competing measure.

#### **I. Plain meaning and the Framers' intent.**

When reviewing the language of Article 19, Section 2(3), we must follow the same rules of construction that apply to statutes. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 538 (2001). Under those rules, the primary task is to ascertain the intent of the Framers of the constitutional provision and to adopt an interpretation that best captures their objective. *Id.* The first step in determining the intent of the Framers is to review the language used in the provision because that is the best evidence of intent. *Miller v. Burk*, 124 Nev. 579, 590 (2008). The language used in the provision must be given its plain meaning unless doing so would violate the spirit of the provision or would lead to an unreasonable or absurd result. *Id.* at 590-91; *Nev. Mining Ass'n*, 117 Nev. at 542 & N.29.

The language of Article 19, Section 2(3) states that "[i]f the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may

propose a different measure on the same subject." The Governor interprets his executive power to "recommend" a competing measure as a condition precedent to the Legislature's exercise of its legislative power to propose a competing measure. However, the Governor's interpretation ignores the grammatical structure of the sentence, and it requires reading an implied condition into the constitutional language contrary to its plain meaning.

If the Framers of the constitutional provision had intended for the Governor's power of recommendation to be an express condition precedent, they could have drafted the provision to state that "[i]f the Legislature rejects such proposed statute or amendment *and* the Governor recommends to the Legislature a different measure, the Legislature may propose a different measure on the same subject." If the Framers had drafted the provision in this manner, the language would have provided, in clear and unmistakable terms, that the Governor's power of recommendation operates as an express condition precedent to the Legislature's exercise of its legislative power to propose a competing measure.

However, that is not how the Framers drafted the constitutional provision. Instead, the Framers drafted the provision so that the Legislature's rejection of the statutory initiative is the only express condition precedent to the Governor's power to recommend a competing measure *and* the Legislature's power to propose a competing measure. In other words, when the Legislature rejects a statutory initiative, the Governor and the Legislature each have separate and mutually exclusive powers under Article 19, Section 2(3) that may be exercised independently of each other. Thus, the Governor may recommend a competing measure, but the Legislature may decline to propose a competing measure. Conversely, the Governor may decline to recommend a competing measure, but the Legislature may elect to propose a competing measure. Because this is how the legislative process traditionally operates under the separation of powers, it would be unreasonable and absurd to interpret the Governor's power of recommendation under Article 19, Section 2(3) as having greater force than the Governor's power of recommendation under Article 5, Section 10, especially since the Framers did not draft Article 19, Section 2(3) to make the Governor's power of recommendation an express condition precedent to legislative action.

This conclusion is supported by the presumption that the Framers drafted Article 19, Section 2(3) with full knowledge of all other provisions relating to the same subject. See State v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 295 (2000) ("when the legislature enacts a statute, this court presumes that it does so 'with full knowledge of existing statutes relating to the same subject.'). Because the Framers used the term "recommend" in Article 19, Section 2(3), it must be presumed that the Framers intended for that term to have the same meaning ascribed to it in Article 5, Section 10. See Savage v. Pierson, 123 Nev. 86, 94 (2007) ("when the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise."). Under Article 5, Section 10, the Governor's recommendation of legislative measures is not a prerequisite or condition precedent to legislative action. Because the Framers only gave the Governor the power to "recommend" competing measures under Article 19, Section 2(3), it must be presumed that the Governor's power to recommend competing measures under that section is no greater than the Governor's power to recommend legislative measures under Article 5, Section 10, and that the Governor's recommendation of competing measures is not a prerequisite or condition precedent to legislative action.

Furthermore, because any competing measure passed by the Legislature must be presented to the Governor for approval or veto like any other bill under Article 4, Section 35 of the *Nevada Constitution*, it would be unreasonable and absurd to interpret Article 19, Section 2(3) to give the Governor absolute power to control whether the Legislature may propose a competing measure at the beginning of the legislative process when the Governor also has the power to approve or veto the competing measure at the end of the legislative process. Such a substantial and unusual shift in the balance of power in favor of the Governor could be accomplished only through the most clear and unmistakable language. Because the Framers did not draft Article 19, Section 2(3) with such clear and unmistakable language, it is the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with the constitutional provision's plain meaning and the Framers' intent and that such an interpretation would produce unreasonable and absurd results.

## II. Historical evidence and legislative practice.

It is also the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with historical evidence and legislative practice. As noted by the Governor, Article 19 was substantially revised in 1962. However, based on the history and purpose of the 1962 constitutional amendment, it is clear that the revisions to Article 19 did not change the constitutional procedure for the Legislature to propose competing measures to statutory initiatives. Furthermore, since the ratification of the 1962 constitutional amendment, the Legislature has proposed several competing measures to statutory initiatives without the Governor's recommendation. This long-standing legislative practice under Article 19, Section 2(3) is entitled to great weight and deference, and it would not be readily disturbed by the courts.

Turning first to the 1962 constitutional amendment that revised Article 19, the intent of voters who approved the amendment may be determined by reviewing the ballot materials placed before the voters at the election, including the ballot question, the ballot explanation and the arguments for and against passage. Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001). The ballot explanation for the 1962 constitutional amendment stated:

Although entirely rewritten to clarify its provisions, the proposed amendment leaves Article 19 *substantially unchanged*, except that the method of amending the Constitution by the people is different.

Constitutional Amendments to be Voted Upon in State of Nevada at General Election, November 6, 1962, at p. 11 (Nev. Sec'y of State 1962) (emphasis added).

As clearly stated in the ballot explanation for the 1962 constitutional amendment, the purpose of the amendment was to change only the method of amending Nevada's Constitution by initiative petition. The 1962 constitutional amendment did not change the method of amending Nevada's statutes by initiative petition. It merely clarified those provisions without making substantive changes.

Thus, contrary to the Governor's contention, the voters at the 1962 General Election did not change the constitutional procedure for the Legislature to propose competing measures to statutory initiatives because the 1962 constitutional amendment did not make substantive changes to that procedure. Therefore, the 1962 constitutional amendment did not make the Governor's recommendation a prerequisite or condition precedent to legislative action under Article 19, Section 2(3) because that would have been a substantive change that fell outside the intent of the voters. This fact is confirmed by long-standing legislative practice over the past 50 years during which the Legislature has proposed several competing measures to statutory initiatives without the Governor's recommendation.

When interpreting constitutional provisions, courts often use extrinsic evidence to help ascertain the intent of the Framers, including historical evidence and long-standing legislative practices. See State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 761-71 (2001); State ex rel. Herr v. Laxalt, 84 Nev. 382, 387 (1968); State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901). Typically, courts give great weight and deference to a long-standing legislative construction of a constitutional provision, especially if that construction is reasonable in light of the history and purpose of the provision. See State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883); Halverson v. Miller, 124 Nev. 484, 489 (2008). Thus, a long-standing legislative construction will be "treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 400 (1876).

Since the revision of Article 19 in 1962, the Legislature has been presented with statutory initiatives during the 1981, 1989, 2003, 2005 and 2009 regular sessions.<sup>1</sup> Under Article 4,

<sup>1</sup> Assembly Journal, 61st Reg. Sess., at p. 6, 29 (Nev. 1981) (protection of utility customers); Assembly Journal, 65th Reg. Sess., at p. 8, 9, 23 (Nev. 1989) (corporate net profits tax for educational purposes); Senate Journal, 72nd Reg. Sess., at p. 158, 982, 1082 (Nev. 2003) (medical malpractice); Assembly Journal, 73rd Reg. Sess., at p. 159 (Nev. 2005) ([1] Nevada Clean Indoor Air Act; [2] Responsibly Protect Nevadans from Second-Hand Smoke Act;

Section 14 of the *Nevada Constitution*, the Journals of the Senate and Assembly are the official records of the Legislature, and under the Joint Standing Rules of the Senate and Assembly, each message and proclamation received from the Governor is read and entered in full in the Journals. Based on an examination of the Journals, there is no official record of any message from a Nevada Governor recommending a specific bill as a competing measure to a statutory initiative even though the Legislature has introduced, considered and passed competing measures to statutory initiatives on several occasions.

For example, during the 61st Regular Session in 1981, the Legislature introduced three bills—A.B. 58, A.B. 85 and A.B. 473—which were proposed as competing measures to a statutory initiative relating to the protection of utility customers through the creation of a division of consumer advocacy in the office of the Attorney General. Assembly Journal, 61<sup>st</sup> Reg. Sess., at p. 53, 65, 498 (Nev. 1981). The competing measures were considered extensively by the Assembly Standing Committee on Government Affairs and the Senate Standing Committee on Commerce and Labor. Legislative History for A.B. 473, 61st Reg. Sess. (Nev. 1981). Although Governor List supported A.B. 58 as a competing measure, there is no official record in the Journals of a message from the Governor specifically recommending A.B. 58, A.B. 85 or A.B. 473 as a competing measure to the statutory initiative. Ultimately, the Legislature passed A.B. 473, which was approved by the Governor and submitted to the voters as a competing measure at the 1982 general election where it prevailed over the statutory initiative. Questions to be Voted Upon in State of Nevada at General Election, November 2, 1982, at pp. 20-32 (Nev. Sec'y of State 1982).

It is reasonable to conclude that if Governor List or the Legislature had interpreted Article 19, Section 2(3) to make the Governor's recommendation of a competing measure a prerequisite or condition precedent to legislative action, there would be an official record in the Journals of the Governor's message recommending a specific bill as a competing measure. The fact that no such official record exists for any year in which the Legislature has been presented with a statutory initiative is compelling evidence that neither the executive branch nor the legislative branch has previously interpreted Article 19, Section 2(3) to make the Governor's recommendation a prerequisite or condition precedent to legislative action on competing measures. Therefore, it is the opinion of this office that the Governor's interpretation of Article 19, Section 2(3) is inconsistent with historical evidence and legislative practice.

### **III. Any uncertainty or ambiguity in a constitutional provision must be resolved in favor of the power of the Legislature.**

Even if there were some uncertainty or ambiguity regarding whether the Governor's recommendation is a prerequisite or condition precedent to legislative action on competing measures, that uncertainty or ambiguity would have to be resolved in favor of the Legislature. This rule of construction 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).

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 or State Constitution. Ex parte Boyce, 27 Nev. 299,

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[3] regulation of the sale, use and possession of one ounce or less of marijuana); Assembly Daily Journal, 75th Reg. Sess., at p. 17 (Nev. Feb. 2, 2009) (additional tax on gross receipts from rental of transient lodging in certain counties).

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.

Accordingly, even if the provisions of Article 19, Section 2(3) were considered to be uncertain or ambiguous, that uncertainty or ambiguity would have to be resolved in favor of the Legislature's power to introduce, consider and pass competing measures without the Governor's recommendation. 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*, 117 Nev. at 540. Therefore, because an interpretation of Article 19, Section 2(3) involves legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

#### **CONCLUSION**

After examining relevant provisions of the *Nevada Constitution*, reviewing historical evidence and prior legislative practice and applying the fundamental rules of constitutional construction, it is the opinion of this office that the Governor's recommendation to the Legislature of a competing measure is not a prerequisite or condition precedent to the Legislature's introduction, consideration or passage of a competing measure under Article 19, Section 2(3) of the *Nevada Constitution*. Furthermore, because this issue involves the interpretation of a constitutional provision affecting legislative procedure, the Legislature is entitled to follow an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation.

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

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the legal opinion on Initiative Petition 1 be entered in the Journal.

Motion carried.

WAIVERS AND EXEMPTIONS  
NOTICE OF EXEMPTION

April 11, 2011

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the exemption of: Senate Bills Nos. 207, 208, 244, 485.

Also, the Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 188, 199, 201, 214, 223, 224, 228, 233, 240, 246, 255.

MARK KRMPOTIC  
*Fiscal Analysis Division*

## MOTIONS, RESOLUTIONS AND NOTICES

By Senators Breeden, Brower, Cegavske, Copening, Denis, Gustavson, Halseth, Hardy, Horsford, Kieckhefer, Kihuen, Lee, Leslie, Manendo, McGinness, Parks, Rhoads, Roberson, Schneider, Settelmeyer, Wiener; Assemblymen Segerblom, Aizley, Anderson, Atkinson, Benitez-Thompson, Bobzien, Brooks, Bustamante Adams, Carlton, Carrillo, Conklin, Daly, Diaz, Dondero Loop, Ellison, Flores, Frierson, Goedhart, Goicoechea, Grady, Hambrick, Hammond, Hansen, Hardy, Hickey, Hogan, Horne, Kirkpatrick, Kirner, Kite, Livermore, Mastroluca, McArthur, Munford, Neal, Ocegüera, Ohrenschall, Pierce, Sherwood, Smith, Stewart and Woodbury:

Senate Concurrent Resolution No. 6—Memorializing Marie H. Soldo.

WHEREAS, The members of the Nevada Legislature were deeply aggrieved to learn of the passing of Marie H. Soldo on February 5, 2010; and

WHEREAS, Marie was born on February 11, 1941, in New York City, New York, to Lenfranco and Mary Soldo and lived in Las Vegas, Nevada, since September of 1984; and

WHEREAS, During her time in Las Vegas, she served as the Executive Vice President of Government Affairs and Special Projects for Sierra Health Services; and

WHEREAS, Marie represented the interests of Sierra Health Services, the Nevada Association of Health Plans and many other health care-related causes in the hallways of the State Legislature since 1984; and

WHEREAS, Marie was always willing to step in to help others and often put the interests of others before herself; and

WHEREAS, Marie traveled extensively and engaged her passion for helping the underserved, including being instrumental in the development of health care programs in Africa and helping children in Belize get specialized health care in the United States; and

WHEREAS, Marie's love and passion for helping others led her to support the St. John's University of Tanzania School of Nursing and its medical clinic in Tanzania, where she often traveled to work in the clinic; and

WHEREAS, St. John's University of Tanzania School of Nursing has recognized Marie's contributions by dedicating its computer center to her, the Marie Soldo Nursing Computer Center; and

WHEREAS, Marie leaves behind her son Christopher Soldo Hamner, his wife Kristina, her grandson William, a loving extended family and many dear friends and acquaintances who miss her generous heart, her passion and her spirit; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the members of the Seventy-sixth Session of the Nevada Legislature hereby extend their earnest condolences to Marie's family and friends; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to Marie's son Christopher Soldo Hamner.

Senator Breeden moved the adoption of the resolution.

Remarks by Senators Breeden, Cegavske, Schneider and Horsford.

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

SENATOR BREEDEN:

It is an honor to rise today to make a few remarks about Marie Soldo, a person who was dear to the members of this body and to those who have traveled here today.

Most of you know her as the Executive Vice President for Government Affairs of Sierra Health Services, the Nevada Association of Health Plans, and other health organizations. In that capacity, she was a familiar face in the halls of the Nevada Legislature for many years. Those of you who had the honor of working with her as a lobbyist, relied upon her.

I never had the honor of working at the Nevada State Legislature with Marie. I became friends with her several years ago through mutual acquaintances, Dr. and Mrs. John and Judith Nanson.

When I decided to run for the Senate, she told me stories of what happened here. We always talked about children because her son was close to the age of my sons.

When I speak of Marie Soldo, I am reminded of the words spoken of Sir Christopher Wren, "If you seek his memorial, look around you." In truth, much of what is good, much of what is humane, and much of what is effective about the health care policies of this State owes its origin to the vision and foresight of Marie Soldo.

Though she has passed on, the shadow of her influence still lies over this body, over the State of Nevada, and over all those people throughout the world who are the knowing or unknowing beneficiaries of her work.

On behalf of this body, I extend our condolences and our comfort to her friends, and her family, Chris Hamner, his wife, Kristina Zajcnerova, their son, William, and Kristina's mother, Marie Zajcnerova, and all those who were fortunate enough to know and work with Marie Soldo.

She will always hold a dear spot in our hearts. We miss her.

SENATOR CEGAVSKE:

I rise in support of Senate Concurrent Resolution No. 6. Marie Soldo was not only a friend to everyone; she was someone who was ready to help educate us on healthcare issues. She was there for us no matter what the issue was and she was able to tell us both sides. She knew how to bring people together to resolve a difference of opinion. She taught us you could be friends with anyone. She could bring together those who would not have thought they could be friends or have a friendship. For her, her friendship and what she has done for the State of Nevada are irreplaceable. I want to thank her family for sharing her with all of us.

Marie is in our thoughts and prayers forever.

SENATOR SCHNEIDER:

For many years, I have been on the Senate Committee on Commerce, Labor & Energy. Marie Soldo came each morning to the committee meetings. She opposed every mandate placed on insurance. Once, the Chamber of Commerce had a stripped down healthcare bill. It eliminated a lot of coverage. I asked Marie to testify and asked her how she stood on this bill. She stated she opposed it. I asked how much money would be saved by eliminating pap smears and mammograms from the healthcare packages. She stated she did not know, but they could not sell a policy without that coverage in it. When I asked her what she meant, she said that no one would buy a policy without pap smear and mammogram coverage. But, she opposed the mandate. She always stated her views so nicely, and with class. The healthcare industry turned out better because of Marie Soldo.

SENATOR HORSFORD:

Thank you, Mr. President. I had the honor of working with Chris Hamner. Marie Soldo will be known for many things. She left many legacies, but one of the most important was her son. She struggled to raise him as a single parent, but she was committed to see him succeed and go on to do great things. Among all of her legacies, having her son here to receive this small token of appreciation on our behalf is important because of everything that she meant to Chris and what Chris meant to her. We are happy to have Chris and his family here in this body today.

Resolution adopted.

Senator Breeden moved that all necessary rules be suspended and that Senate Concurrent Resolution No. 6 be immediately transmitted to the Assembly.

Motion carried unanimously.

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

Senate in recess at 11:39 a.m.

#### SENATE IN SESSION

At 12:18 a.m.

President Krolicki presiding.

Quorum present.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Copening moved that Senate Bill No. 115 be re-referred to the Committee on Finance.

Motion carried.

Senator Wiener moved that Senate Bills Nos. 30, 44, 65, 74, 77, 82, 85, 96, 102, 111, 136, 143, 152, 153, 167, 213, 215, 280, 353, 358, 408 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

#### INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 2.

Senator Wiener moved that the bill be referred to the Committee on Transportation.

Motion carried.

Assembly Bill No. 152.

Senator Wiener moved that the bill be referred to the Committee on Transportation.

Motion carried.

Assembly Bill No. 156.

Senator Wiener moved that the bill be referred to the Committee on Commerce, Labor and Energy.

Motion carried.

Assembly Bill No. 306.

Senator Wiener moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

Assembly Bill No. 322.

Senator Wiener moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

Assembly Bill No. 451.

Senator Wiener moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

Assembly Bill No. 464.

Senator Wiener moved that the bill be referred to the Committee on Judiciary.

Motion carried.

#### SECOND READING AND AMENDMENT

Senate Bill No. 120.

Bill read second time.

The following amendment was proposed by the Committee on Natural Resources:

Amendment No. 141.

"SUMMARY—Revises provisions governing the Committee on High-Level Radioactive Waste. (BDR 40-248)"

"AN ACT relating to ~~hazardous~~ **radioactive** materials; revising the scope of the duties of the Committee on High-Level Radioactive Waste; revising the name of the Committee; and providing other matters properly relating thereto."

#### **Legislative Counsel's Digest:**

Existing law establishes the Committee on High-Level Radioactive Waste and requires the Committee to study and evaluate the proposed location of a facility for the disposal of high-level radioactive waste at Yucca Mountain. (NRS 459.0085) **Section 1** of this bill expands the scope of the Committee's duties to include the study and evaluation of other policies relating to the disposal of low-level radioactive waste, transuranic waste, spent nuclear fuel ~~and~~ **and** certain other radioactive materials. ~~and hazardous waste.~~ In addition, **section 1** changes the name of the Committee to the Committee on Radioactive Waste ~~and Hazardous Waste~~ to reflect the Committee's broader authority.

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

**Section 1.** NRS 459.0085 is hereby amended to read as follows:

459.0085 1. There is hereby created a Committee on ~~High-Level~~ Radioactive Waste ~~and Hazardous Waste.~~ It is a committee of the Legislature composed of:

(a) Four members of the Senate, appointed by the Majority Leader of the Senate.

(b) Four members of the Assembly, appointed by the Speaker.

2. The Legislative Commission shall review and approve the budget and work program for the Committee and any changes to the budget or work program. The Legislative Commission shall select a Chair and a Vice Chair from the members of the Committee.

3. Except as otherwise ordered by the Legislative Commission, the Committee shall meet not earlier than November 1 of each odd-numbered year and not later than August 31 of the following even-numbered year at the call of the Chair to study and evaluate:

(a) Information and policies regarding the location in this State of a facility for the disposal of high-level radioactive waste;

(b) Any potentially adverse effects from the construction and operation of a facility and the ways of mitigating those effects; and

(c) Any other policies relating to the disposal of ~~high-level~~ radioactive waste ~~and hazardous waste.~~

4. The Committee shall report the results of its studies and evaluations to the Legislative Commission and the Interim Finance Committee at such times as the Legislative Commission or the Interim Finance Committee may require.

5. The Committee may recommend any appropriate legislation to the Legislature and the Legislative Commission.

6. The Director of the Legislative Counsel Bureau shall provide a Secretary for the Committee on ~~High-Level~~ Radioactive Waste ~~and Hazardous Waste.~~ Except during a regular or special session of the Legislature, each member of the Committee is entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session for each day or portion of a day during which the member attends a Committee meeting or is otherwise engaged in the work of the Committee plus the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218A.655. Per diem allowances, salary and travel expenses of members of the Committee must be paid from the Legislative Fund.

7. ~~For the purposes of this section~~

~~(a) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.~~

~~(b) "Radioactive", "radioactive waste" means radioactive material,~~

~~including, without limitation:~~

~~(1) (a) High-level radioactive waste;~~

~~(2) (b) Low-level radioactive waste;~~

~~(3) (c) Transuranic waste;~~

~~##4##~~ *(d) Spent nuclear fuel;*

~~##5##~~ *(e) Any radioactive material resulting from, or a by-product of, the nuclear fuel cycle, the reprocessing of spent nuclear fuel or the reprocessing of nuclear weapons; and*

~~##6##~~ *(f) Any other radioactive material that the Nuclear Regulatory Commission determines must be permanently isolated.*

↪ *The term includes, without limitation, radioactive material that is a solid, semisolid, liquid or contained gas, or any combination thereof.*

**Sec. 2.** NRS 459.0094 is hereby amended to read as follows:

459.0094 The Executive Director shall:

1. Appoint, with the consent of the Commission, an Administrator of each Division of the Agency.

2. Advise the Commission on matters relating to the potential disposal of radioactive waste in this State.

3. Evaluate the potentially adverse effects of a facility for the disposal of radioactive waste in this State.

4. Consult frequently with local governments and state agencies that may be affected by a facility for the disposal of radioactive waste and appropriate legislative committees.

5. Assist local governments in their dealings with the Department of Energy and its contractors on matters relating to radioactive waste.

6. Carry out the duties imposed on the State by 42 U.S.C. §§ 10101 to 10226, inclusive, as those sections existed on July 1, 1995.

7. Cooperate with any governmental agency or other person to carry out the provisions of NRS 459.009 to 459.0098, inclusive.

8. Provide semiannual written reports to the Committee on ~~High-Level~~ Radioactive Waste ~~and Hazardous Waste.~~ The reports must contain:

(a) A summary of the status of the activities undertaken by the Agency since the previous report;

(b) A description of all contracts the Agency has with natural persons or organizations, including, but not limited to, the name of the recipient of each contract, the amount of the contract, the duties to be performed under the contract, the manner in which the contract assists the Agency in achieving its goals and responsibilities and the status of the performance of the terms of the contract;

(c) The status of any litigation relating to the goals and responsibilities of the Agency to which the State of Nevada is a party; and

(d) Any other information requested by the Legislative Committee.

**Sec. 3.** This act becomes effective on July 1, 2011.

Senator Parks moved the adoption of the amendment.

Remarks by Senator Parks.

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

This amendment deletes language in the bill that would have expanded the duties of the Committee on High-Level Radioactive Waste to include the study of hazardous waste.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 175.

Bill read second time and ordered to third reading.

Senate Bill No. 279.

Bill read second time and ordered to third reading.

Senate Bill No. 317.

Bill read second time and ordered to third reading.

Senate Bill No. 348.

Bill read second time and ordered to third reading.

Senate Joint Resolution No. 14.

Resolution read second time and ordered to third reading.

UNFINISHED BUSINESS  
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bill No. 193.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Breeden, the privilege of the Floor of the Senate Chamber for this day was extended to Christopher Hamner, Kristina Vajcnerova, Marie Vajcnerova, and William Hamner.

On request of Senator Cegavske, the privilege of the Floor of the Senate Chamber for this day was extended to Shelley Cranley, Dr. Anthony Marlon, Linda Morris and Kathy Silver.

On request of Senator Denis, the privilege of the Floor of the Senate Chamber for this day was extended to Judi Steele and John Marble.

On request of Senator Horsford, the privilege of the Floor of the Senate Chamber for this day was extended to former Senator William J. Raggio and Dale Raggio.

On request of Senator Kihuen, the privilege of the Floor of the Senate Chamber for this day was extended to Wayne Burke, Bryan Cassadore and Mervin Wright Jr.

On request of Senator Settlemeyer, the privilege of the Floor of the Senate Chamber for this day was extended to Linda Cuddy.

On request of Senator Wiener, the privilege of the Floor of the Senate Chamber for this day was extended to Frankie Sue Del Pappa, former Nevada Attorney General and Secretary of State.

Senator Wiener moved that the Senate adjourn until Thursday, April 14, 2011, at 11 a.m.

Motion carried.

Senate adjourned at 12:35 p.m.

Approved:

BRIAN K. KROLICKI  
*President of the Senate*

Attest: DAVID A. BYERMAN  
*Secretary of the Senate*