

Journal  
OF THE  
SENATE OF THE STATE  
OF NEVADA

---

TWENTY-FIFTH SPECIAL SESSION

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THE FIRST DAY

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CARSON CITY (Monday), December 8, 2008

Senate called to order at 9:31 a.m.

President Krolicki presiding.

Prayer by the Chaplain, Pastor Albert Tilstra.

Almighty God, guide our lawmakers through this day with Your higher wisdom. May faith replace fear; truth arise over falsehood; justice triumph over greed; love prevail over hate, and peace conquer strife.

Guide us, O God of power and strength. We are weak, but You are mighty. Lead us with Your powerful hand. Intervene in these crisis circumstances, and give us Your peace.

Make the members of this body part of Your answer for the problems of our time. Show them what You want them to do, and may they leave the results to You.

In Your Holy Name,

AMEN.

Pledge of Allegiance to the Flag.

MOTIONS, RESOLUTIONS AND NOTICES

Mr. President requested Mrs. Claire J. Clift to serve as temporary Secretary of the Senate and Mr. Ken Evans to serve as temporary Sergeant at Arms.

Mr. President instructed the temporary Secretary to call the roll of the holdover Senators.

Roll called.

All holdover Senators present.

Mr. President appointed Senators Care, Mathews and Nolan as a temporary Committee on Credentials.

Mr. President announced that if there were no objections the Senate would recess subject to the call of the Chair while credentials of the newly-elected Senators were examined by the temporary Committee on Credentials.

Senate in recess at 9:34 a.m.

## SENATE IN SESSION

At 9:39 a.m.

President Krolicki presiding.

Quorum present.

## REPORTS OF COMMITTEES

*Mr. President:*

Your temporary Committee on Credentials has had the credentials of the newly-elected Senators under consideration and begs leave to report that the following persons have been and are duly elected and qualified members of the Senate of the Twenty-fifth Special Session of the Legislature of the State of Nevada: Senators Shirley A. Breeden, Allison Copening, Steven A. Horsford, John J. Lee, Mike McGinness, David R. Parks, William J. Raggio, Dean A. Rhoads, Michael A. Schneider and Valerie Wiener.

TERRY CARE  
BERNICE MATHEWS  
DENNIS NOLAN

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Care moved that the report of the temporary Committee on Credentials be adopted.

Motion carried.

Mr. President appointed Senators Carlton, Woodhouse and Rhoads to escort Chief Justice James W. Hardesty of the Supreme Court of Nevada to the rostrum to administer the oath of office to the newly-elected Senators.

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

Senate in recess at 9:40 a.m.

## SENATE IN SESSION

At 9:41 a.m.

President Krolicki presiding.

Quorum present.

Chief Justice Hardesty administered the oath of office to the newly-elected Senators.

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

Senate in recess at 9:45 a.m.

## SENATE IN SESSION

At 9:48 a.m.

President Krolicki presiding.

Quorum present.

Senator Coffin moved that the Chief Justice be extended a unanimous vote of thanks for administering the oath.

Motion carried unanimously.

Mr. President instructed the temporary Secretary to call the roll of the Senators.

Roll called.

All Senators present.

Mr. President declared that nominations were in order for President pro Tempore.

Senator Amodei nominated Senator Schneider for President pro Tempore.

Senator Wiener moved that the nominations be closed.

Motion carried.

Mr. President declared Senator Schneider to be President pro Tempore of the Senate.

Mr. President declared that nominations were in order for Secretary of the Senate.

Senator Horsford nominated Mrs. Claire J. Clift to be Secretary of the Senate.

Senator Raggio moved that the nominations be closed.

Motion carried.

Mr. President declared Mrs. Claire J. Clift to be the Secretary of the Senate.

Mr. President appointed Senators Lee, Breeden and McGinness as a committee of three to inform the Assembly that the Senate is organized and ready for business.

Mr. President appointed Senators Parks, Copening and Hardy as a committee of three to inform the Governor that the Senate is organized and ready for business.

Senator Horsford moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of appropriate media facilities: 18: NEWS CARSON CITY: David D. Morgan; ASSOCIATED PRESS: Amanda Fehd, Kathleen Hennessey, Joe Mullin, Brendan Riley; CARSON TIMES: Sue Morrow; CBS NEWS: Blake Hottle, Douglas Longhini, Scott Osterman; CITY LIFE: Steve Sebelius; COVEREDGE TELEVISION NEWS SERVICES: Richard Travis; COX COMMUNICATIONS: Steve Schorr, Richard Travis; DAILY SPARKS TRIBUNE/NEVADALABOR.COM: Andrew L. Barbano; HENDERSON HOME NEWS: Derek Olson; HUMBOLDT SUN: Forrest Newton; INDEPENDENT: Gary M. G. Deacon; KJFK-AM: William Puchert; KLAS-TV: Matthew Adams, Matthew Bell, Alex Brauer, Richard Czarny, Jonathan Humbert, George Knapp, Richard Travis; KLVX-TV/IBEX FILMS: Michael Jaymen; KNPB CHANNEL 5: Andrew Cristancho, Dave Santina; KOLO-TV: Edward W. Barnett, Justin Kanno, Ray Kinney, Ed Pearce, Terri Russell; KREN & KAZR: Alexandra Limon; KREN 27: Greg Knight; KRNV-TV: Emily Bails,

Kausik Bhakta, Victoria Campbell, Hetty Chang, Billy Churchwell, Jeff Deitch, Sarah Johns, Chuck King, Rebecca Little, Matt Scholz, Michael Thompson, Elizabeth Wagner; KTVN-TV: Kent Albrecht, Jack Antonio, Bill Brown, Eric Brown, John E. Cruz, Bryan Evans, Jeffrey Foss, Scott Hargrove, Ozkar Palomo, David Ratto, Charles Brent Richard, Brandon Rittiman, Louis Sierra, Casey Smith, Steve Sonnenburg, Vanessa Vancour; KVBC-TV: Steve Crupi, Ian Lash; LAS VEGAS REVIEW-JOURNAL: Lisa Kim Bach, Molly Ball, Henry Brean, K. M. Cannon, Lynette Curtis, John Edwards, Frank Geary, John Gurzinski, Paul Harasim, Brian Haynes, A. D. Hopkins, Mary Hynes, K. C. Howard, Mike Kalil, Clint Karlsen, David Kihara, John Locher, Alan Maimon, Francis McCabe, Margaret Miille, Thomas Mitchell, Craig Moran, Jane Ann Morrison, Lawrence Mower, Erin Neff, Adrienne Packer, Antonio Planas, Glenn Puit, Keith Rogers, Jeff Scheid, David McGrath Schwartz, John L. Smith, Omar Sofradzija, Carri Geer Thevenot, Gary Thompson, Ed Vogel, Annette Wells, Sean Whaley, Joan Whitely, Charles Zobell; LAS VEGAS SUN: Tiffany Brown, J. Patrick Coolican, Christina Littlefield, Cy Ryan, Joe Schoenmann; MINEWEB: Dorothy Y. Kosich; NEVADA APPEAL: Becky Bosshart, Rhonda Costa-Landers, Geoff Dornan, Terri Harber, Brad Horn, Chad Lundquist, Jarid Shipley; NEVADA NEWSMAKERS: Lisa Jansen, Randi Thompson; NEVADA OBSERVER: Johnny Gunn, Dennis Locke; NEVADA PUBLIC RADIO: Brian Bahouth; NEVADA SAGEBRUSH: Brian Duggan, Annie Flanzraich; NEWS 4 RENO/SUNBELT DIGITAL MEDIA: Melissa Sullivan; NEWSTALK 780 KOH: Samantha Stone; PBS LAS VEGAS: Samantha Stone; POLYGRAVITY MEDIA LLC: Joseph Cooper; RENO GAZETTE-JOURNAL: Martha Bellisle, Anjeanette Damon, Guy Clifton, Bill O'Driscoll, Jaclyn O'Malley, Lisa Tolda; RENO SPARKS VIDEO PRODUCTIONS: William G. Pearce, Jr.; SEERENO.TV: Todd Bailey; SENIOR SPECTRUM NEWSPAPER: Chris C. McMullen, Connie McMullen, Tara McMullen; SIERRA NEVADA COMMUNITY ACCESS: Don Alexander, Brett Corbin, Tyler Elliott, Steve Goodin, Charlie Moses, Nadzir Nicaupour, Joel Robertson, Les Smith, Earl Spriggs; SUMMERLIN NEWS: Jamie Helmick; Sunbelt Digital Media/KRNV.com: John B. Barrette; SUN PRODUCTIONS: Sunny Minedew; SUNBELT COMMUNICATIONS: Chase McMullen; TAHOE DAILY TRIBUNE: Dan Thrift, William Ferchland; VOICEBOX/WOLFPACKRADIO: Donnell Pike-Anuken; WE THE PEOPLE: Shayne Del Cohen.

Motion carried.

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

Senate in recess at 9:53 a.m.

## SENATE IN SESSION

At 10:02 a.m.

President Krolicki presiding.

Quorum present.

A committee from the Assembly composed of Assemblymen Conklin, Stewart and Assemblywoman Leslie appeared before the bar of the Senate and announced that the Assembly was organized and ready for business.

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

Senate in recess at 10:03 a.m.

## SENATE IN SESSION

At 10:06 a.m.

President Krolicki presiding.

Quorum present.

Senator Lee reported that his committee had informed the Assembly that the Senate is organized and ready for business.

Senator Parks reported that his committee had informed the Governor that the Senate is organized and ready for business.

## MESSAGES FROM THE GOVERNOR

STATE OF NEVADA

EXECUTIVE CHAMBER

CARSON CITY, NEVADA 89701

December 5, 2008

THE HONORABLE STEPHEN A. HORSFORD, *Senate Majority Leader*, Nevada State Senate

401 South Carson Street, Carson City, Nevada 89701

*To the Honorable Members of the Nevada State Senate:*

The Nevada State Constitution, in Article 5, Section 9, provides that the Governor may on extraordinary occasions convene a special session of the Legislature by proclamation.

As we all know, general fund revenues for the current biennium continue to come in at significantly lower amounts than the general funds appropriated by the Legislature in its Seventy-fourth Regular Session. In June, I called the Legislature into special session to respond to decreased revenues. Although, we all worked together to address the revenue shortfall at that time, the spending reductions that came out of that special session have proven to be insufficient. On December 1, 2008, the Economic Forum convened and determined that the general fund will be at least another \$340 million short in the current fiscal year. In June, I called this a budget crisis of unprecedented magnitude, and the severity of this crisis has only increased since that time.

Working together, we have already identified and implemented well over a billion dollars in spending reductions to address our fiscal crisis. However, as the amount of the budget deficit continues to grow, it has become necessary to convene a special session of the Legislature to help find appropriate and responsible solutions.

I have therefore issued a proclamation calling the Legislature into a special session. In that proclamation, I identify several options that will not only solve the current revenue shortfall, but will show our citizens that their elected officials are willing to make the tough decisions necessary to maintain a balanced budget in difficult economic times.

Among those options are areas, I believe, the Legislature should consider including reductions to state operating budgets, reductions and transfers of funds in nongeneral fund

accounts, the establishment of a line of credit, the acceleration of payment for the net proceeds of minerals tax, and a reconsideration of some other budget solutions that were agreed upon by the Legislature earlier this year but have yet to be implemented. I believe the recommendations will resolve the budget deficit for the current fiscal year and will allow the State to focus on an even more significant fiscal challenge—the preparation and enactment of a responsible and balanced budget for the next biennium. Even more importantly, the recommendations provide a solution that does not involve raising taxes on our citizens.

I have not limited the special session to my recommendations, although the scope of the special session has been otherwise defined and limited in the proclamation. Consider only the matters set forth in the proclamation.

All of our citizens are hopeful that your efforts will meet with success.

Sincerely,

JIM GIBBONS  
*Governor*

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the Secretary of the Senate dispense with the reading of the Governor's Proclamation and that it be entered into the Journal for this legislative day.

Motion carried.

#### OFFICE OF THE GOVERNOR EXECUTIVE ORDER

##### A PROCLAMATION BY THE GOVERNOR

WHEREAS, Section 9 of Article 5 of the Constitution of the State of Nevada provides that "The Governor may on extraordinary occasions, convene the Legislature by Proclamation and shall state to both houses when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business, except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session;" and

WHEREAS, the State of Nevada and its citizens are facing perhaps the worst fiscal and economic crisis since statehood; and

WHEREAS, the State unemployment rate is 7.5% and rising; and

WHEREAS, general fund revenues for the current biennium have consistently come in at amounts significantly less than the amounts appropriated by the Legislature at its Seventy-Fourth Session; and

WHEREAS, upon my direction and recommendation, and with the approval of the Legislature's Interim Finance Committee and with the approval of the Twenty-Fourth Special Session, general fund spending for the current biennium has already been reduced by over one billion dollars; and

WHEREAS, despite such unprecedented spending reductions, the State continues to face steep declines in general fund revenues; and

WHEREAS, increasing taxes during these economic times would place an additional burden on already struggling Nevada families and businesses, and could cause further job losses; and

WHEREAS, the Economic Forum convened on December 1, 2008, and the economic projections from that body establish that the total general fund revenues for the current biennium will continue to decrease, and will be at least another 340 million dollars less than the total general funds appropriated by the Legislature at its Seventy-Fourth Regular Session and at its Twenty-Third and Twenty-Fourth Special Sessions; and

WHEREAS, believing that an extraordinary occasion now exists which requires immediate action by the Legislature in order to preserve the integrity and viability of the general fund for fiscal year 2009 and thereby allow for the continuation of vital services;

NOW, THEREFORE, I, JIM GIBBONS, GOVERNOR OF THE STATE OF NEVADA, by virtue of the authority vested in me by the Constitution of the State of Nevada, do hereby convene the Legislature into a Special Session to consider the following solutions to the general fund shortfall for the current biennium:

1. Reversion to the general fund of certain amounts in non-general fund accounts.
2. Reserve certain general fund appropriations made to fund operating budgets from the Seventy-Fourth Session of the Legislature.
3. Amendments to Chapters 349 and 355 of the Nevada Revised Statutes to establish a line of credit for the State of Nevada from the Local Government Pooled Investment Fund with the assurance that local government revenue streams will not be impacted by the repayment of the line of credit.
4. Amendments to Nevada Revised Statutes § 362.100 et seq. to accelerate and advance the payment schedule of the net proceeds of minerals tax, with consideration of whether this enactment should be limited by a sunset provision.
5. Redirection to the general fund a portion of the amounts in the Trust Fund for Public Health established by Nevada Revised Statutes § 439.605 et seq. as agreed upon in Assembly Concurrent Resolution No. 2 from the Twenty-Fourth Special Session of the Legislature.
6. Reversion to the general fund a portion of the appropriations made to the Account for Programs for Innovation and the Prevention of Remediation established by Nevada Revised Statutes § 385.379.
7. Any other actions directly related to a solution for the projected general fund revenue shortfall for the current biennium.

The Legislature shall consider no matters other than those matters directly related to addressing the general fund revenue shortfall for the current biennium. During the Special Session, the Legislature may also consider any other matters brought to the attention of the Legislature by the Governor. The Special Session shall begin at 9:00 a.m. (Pacific Standard Time) on Monday, December 8, 2008, and shall end not later than 11:58 p.m. (Pacific Standard Time) on Tuesday, December 9, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City this 5th day of December, in the year two thousand eight.

JIM GIBBONS

*Governor*

ROSS MILLER

*Secretary of State*

#### MOTIONS, RESOLUTIONS AND NOTICES

By the Committee of the Whole:

Senate Resolution No. 1—Adopting the Rules of the Senate for the 25th Special Session of the Legislature.

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That the following Rules of the Senate for the 25th Special Session of the Legislature are hereby adopted:

##### I. *APPLICABILITY*

*Rule No. 1. Generally.*

*The Rules of the Senate for the 25th Special Session of the Legislature are applicable only during the 25th Special Session of the Legislature.*

##### II. *OFFICERS AND EMPLOYEES*

###### *DUTIES OF OFFICERS*

*Rule No. 2. President.*

*The President shall take the chair and call the Senate to order precisely at the hour appointed for meeting. He shall preserve order and decorum, and in case of any disturbance or disorderly conduct within the Senate Chamber, shall order the Sergeant at Arms to suppress it, and may order the arrest of any person creating any disturbance within the Senate Chamber. He may speak to points of order in preference to members, rising from his seat for that purpose, and shall decide questions of order without debate, subject to an appeal to the Senate by two members, on which appeal no member may speak more than once without leave of the Senate. He shall sign all acts, addresses and joint resolutions, and all writs, warrants and*

*subpoenas issued by order of the Senate; all of which must be attested by the Secretary. He has general direction of the Senate Chamber.*

*Rule No. 3. President Pro Tem.*

*The President Pro Tem has all the power and shall discharge all the duties of the President during his absence or inability to discharge the duties of his office. In the absence or inability of the President Pro Tem to discharge the duties of the President's office, the Senate shall elect one of its members as the presiding officer for that occasion. A member who is serving as the presiding officer has all the power and shall discharge all the duties of the President until the absence or inability which resulted in the member serving as the presiding officer has ended.*

*Rule No. 4. Secretary.*

*1. The Secretary of the Senate is elected by the Senate, and shall:*

*(a) Interview and recommend persons to be considered for employment to assist the Secretary.*

*(b) See that these employees perform their respective duties.*

*(c) Administer the daily business of the Senate, including the provision of secretaries as needed.*

*(d) Unless otherwise ordered by the Senate, transmit as soon as practicable those bills and resolutions upon which the next action is to be taken by the Assembly.*

*2. The Secretary is responsible to the Majority Leader.*

*Rule No. 5. Sergeant at Arms.*

*1. The Sergeant at Arms shall attend the Senate during its sittings, and execute its commands and all process issued by its authority. He must be sworn to keep the secrets of the Senate.*

*2. The Sergeant at Arms shall:*

*(a) Superintend the upkeep of the Senate's Chamber, private lounge, and meeting rooms.*

*(b) Interview and recommend persons to be considered for employment to assist the Sergeant at Arms.*

*3. The Sergeant at Arms is responsible to the Majority Leader.*

*Rule No. 6. Assistant Sergeant at Arms.*

*The Assistant Sergeant at Arms shall be doorkeeper and shall preserve order in the Senate Chamber and shall assist the Sergeant at Arms. He shall be sworn to keep the secrets of the Senate.*

### III. SESSIONS AND MEETINGS

*Rule No. 7. Call of Senate—Moved by Three Members.*

*A Call of the Senate may be moved by three Senators, and if carried by a majority of all present, the Secretary shall call the roll and note the absentees, after which the names of the absentees shall again be called over. The doors shall then be closed and the Sergeant at Arms directed to take into custody all who may be absent without leave, and all Senators so taken into custody shall be presented at the bar of the Senate for such action as to the Senate may seem proper.*

*Rule No. 8. Absence—Leave Required.*

*No Senator shall absent himself from the service of the Senate without leave, except in case of accident or sickness, and if any Senator or officer shall so absent himself, his per diem shall not be allowed him.*

*Rule No. 9. Open Meetings.*

*1. Except as otherwise provided in the Constitution of the State of Nevada and in subsection 2 of this rule, all meetings of the Senate and the Committee of the Whole or a standing committee must be open to the public.*

*2. A meeting may be closed to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.*

### IV. DECORUM AND DEBATE

*Rule No. 10. Points of Order.*

*1. If any Senator, in speaking or otherwise, transgresses the rules of the Senate, the President shall, or any Senator may, call him to order. If a Senator is so called to order, he shall not proceed without leave of the Senate. If such leave is granted, it must be upon the motion,*



"That he be allowed to proceed in order," and the Senator shall confine himself to the question under consideration and avoid personality.

2. Every decision of points of order made by the President is subject to appeal, and a discussion of a question of order may be allowed only upon the appeal of two Senators. In all cases of appeal, the question must be, "Shall the decision of the Chair stand as the judgment of the Senate?"

Rule No. 11. Breaches of Decorum.

1. In cases of breaches of decorum or propriety, any Senator, officer or other person is liable to such censure or punishment as the Senate may deem proper.

2. If any Senator is called to order for offensive or indecorous language or conduct, the person calling him to order shall report the offensive or indecorous language or conduct to the presiding officer. No member may be held to answer for any language used on the floor of the Senate if business has intervened before exception to the language was taken.

3. Indecorous conduct or boisterous or unbecoming language is not permitted in the Senate Chamber.

#### V. QUORUM, VOTING, ELECTIONS

Rule No. 12. Action Required to Be Taken in Senate Chamber.

Any action taken by the Senate must be taken in the Senate Chamber.

Rule No. 13. Recorded Vote—Three Required to Call For.

1. A recorded vote must be taken upon final passage of a bill or joint resolution, and in any other case when called for by three members. Every Senator within the bar of the Senate shall vote "yea" or "nay" or record himself as "not voting," unless excused by unanimous vote of the Senate.

2. The votes and names of those absent or recorded as "not voting" and the names of Senators demanding the recorded vote must be entered in the Journal.

Rule No. 14. President to Decide—Tie Vote.

A question is lost by a tie vote, but when the Senate is equally divided on any question except the passage of a bill or joint resolution, the President may give the deciding vote.

Rule No. 15. Manner of Election—Voting.

1. In all cases of election by the Senate, the vote must be taken viva voce. In other cases, if a vote is to be recorded, it may be taken by oral roll-call or by electronic recording.

2. When a recorded vote is taken, no Senator may:

- (a) Vote except when at his seat;
- (b) Vote upon any question in which he is in any way personally or directly interested;
- (c) Explain his vote or discuss the question while the voting is in progress; or
- (d) Change his vote after the result is announced.

3. The announcement of the result of any vote must not be postponed.

#### VI. LEGISLATIVE BODIES

Rule No. 16. Committee of the Whole.

1. All bills and resolutions may be referred only to the Committee of the Whole or to such standing committee as may be appointed pursuant to Rule No. 16.5.

2. The Majority Leader shall preside as Chair of the Committee of the Whole or name a Chair to preside.

3. Any meeting of the Committee of the Whole may be conducted outside the Senate Chamber, as designated by the Chair of the Committee.

4. A member of the Committee of the Whole may speak only once on an item listed on the Committee's agenda, for a period of not more than 10 minutes, unless he is granted leave of the Chair to speak for a longer period or more than once. If a member is granted leave to speak for a longer period or more than once, the Chair may limit the length of additional time that the member may speak.

5. Any motion made by a member of the Committee of the Whole must be seconded by another member of the Committee of the Whole.

6. The Chair may require any vote of the Committee of the Whole to be recorded in the manner designated by the Chair.

7. All amendments proposed by the Committee of the Whole:

- (a) Must first be approved by the Committee.

(b) Must be reported by the Chair to the Senate.

8. The minutes of the Committee's meetings must be entered in the final Journal.

Rule No. 16.5. Standing Committees.

In addition to the Committee of the Whole, such standing committees may be appointed as may be deemed necessary.

Rule No. 17. Rules Applicable to Standing Committees and Committee of the Whole.

The Rules of the Senate shall apply to proceedings in Committee of the Whole and such standing committees as may be appointed, except that the previous question shall not be ordered. The rules of parliamentary practice contained in Mason's Manual of Legislative Procedure shall govern such committees in all cases in which they are applicable and in which they are not inconsistent with the rules and orders of the Senate.

Rule No. 18. Motion to Rise Committee of the Whole.

A motion that the Committee of the Whole rise shall always be in order, and shall be decided without debate.

## VII. RULES GOVERNING MOTIONS

### A. MOTIONS GENERALLY

Rule No. 19. Entertaining.

1. No motion may be debated until it is announced by the President.

2. By consent of the Senate, a motion may be withdrawn before amendment or decision.

Rule No. 20. Precedence of Motions.

When a question is under debate, no motion shall be received but the following, which shall have precedence in the order named:

1. To adjourn.

2. For a call of the Senate.

3. To lay on the table.

4. For the previous question.

5. To postpone to a day certain.

6. To commit.

7. To amend.

8. To postpone indefinitely.

↳ The first four shall be decided without debate.

Rule No. 21. When Not Entertained.

1. When a motion to commit, to postpone to a day certain, or to postpone indefinitely has been decided, it must not be again entertained on the same day.

2. When a question has been postponed indefinitely, it must not again be introduced during the Special Session.

3. There must be no reconsideration of a vote on a motion to postpone indefinitely.

### B. PARTICULAR MOTIONS

Rule No. 22. To Adjourn.

A motion to adjourn shall always be in order. The name of the Senator moving to adjourn, and the time when the motion was made, shall be entered in the Journal.

Rule No. 23. Lay on the Table.

A motion to lay on or take from the table shall be carried by a majority vote.

Rule No. 24. To Strike Enacting Clause.

A motion to strike out the enacting clause of a bill or resolution has precedence over a motion to commit or amend. If a motion to strike out the enacting clause of a bill or resolution is carried, the bill or resolution is rejected.

Rule No. 25. Division of Question.

1. Any Senator may call for a division of a question.

2. A question must be divided if it embraces subjects so distinct that if one subject is taken away, a substantive proposition remains for the decision of the Senate.

3. A motion to strike out and insert must not be divided.

Rule No. 26. Explanation of Motion.

Whenever a Senator moves to change the usual disposition of a bill or resolution, he shall describe the subject of the bill or resolution and state the reasons for his requesting the change in the processing of the bill or resolution.

## VIII. DEBATE

Rule No. 27. *Speaking on Question.*

1. Every Senator who speaks shall, standing in his place, address "Mr. or Madam President," in a courteous manner, and shall confine himself to the question before the Senate. When he has finished, he shall sit down.

2. Except as otherwise provided in Senate Rules Nos. 10 and 45 of the 25th Special Session, a Senator may speak only once on a question before the Senate, for a period of not more than 10 minutes, unless he is granted leave of the President to speak for a longer period or more than once. If a Senator is granted leave to speak for a longer period or more than once, the President may limit the length of additional time that the member may speak.

3. Incidental and subsidiary questions arising during debate shall not be considered the same question.

Rule No. 28. *Previous Question.*

The previous question shall not be put unless demanded by three Senators, and it shall be in this form: "Shall the main question be now put?" When sustained by a majority of Senators present, it shall put an end to all debate and bring the Senate to a vote on the question or questions before it, and all incidental questions arising after the motion was made shall be decided without debate. A person who is speaking on a question shall not while he has the floor move to put that question.

## IX. CONDUCT OF BUSINESS

## A. GENERALLY

Rule No. 29. *Mason's Manual.*

The rules of parliamentary practice contained in Mason's Manual of Legislative Procedure shall govern the Senate in all cases in which they are applicable and in which they are not inconsistent with the rules and orders of the Senate for the 25th Special Session of the Legislature, and the Joint Rules of the Senate and Assembly for the 25th Special Session of the Legislature.

Rule No. 30. *Suspension of Rule.*

No rule or order of the Senate for the 25th Special Session of the Legislature shall be rescinded or changed without a majority vote of the Senate; but, except as otherwise provided in Senate Rule No. 39 of the 25th Special Session of the Legislature, a rule or order may be temporarily suspended for a special purpose by a majority vote of the members present. When the suspension of a rule is called for, and after due notice from the President no objection is offered, he can announce the rule suspended and the Senate may proceed accordingly; but this shall not apply to that portion of Senate Rule No. 39 of the 25th Special Session of the Legislature relating to the third reading of bills, which cannot be suspended.

Rule No. 31. *Protest.*

Any Senator, or Senators, may protest against the action of the Senate upon any question, and have such protest entered in the Journal.

Rule No. 32. *Privilege of the Floor.*

1. To preserve decorum and facilitate the business of the Senate, only the following persons may be present on the floor of the Senate during formal sessions:

- (a) State officers;
- (b) Officers and members of the Senate;
- (c) Employees of the Legislative Counsel Bureau;
- (d) Attaches and employees of the Senate; and
- (e) Members of the Assembly whose presence is required for the transaction of business.

2. Guests of Senators must be seated in a section of the upper or lower gallery of the Senate Chamber to be specially designated by the Sergeant at Arms. The Majority Leader may specify special occasions when guests may be seated on the floor of the Senate with a Senator.

3. A majority of Senators may authorize the President to have the Senate Chamber cleared of all persons except Senators and officers of the Senate.

4. The Senate Chamber may not be used for any business other than legislative business during a legislative session.

Rule No. 33. *Material Placed on Legislators' Desks.*

1. Only the Sergeant at Arms and officers and employees of the Senate may place papers, letters, notes, pamphlets and other written material upon a Senator's desk. Such material must contain the name of the Legislator requesting the placement of the material on the desk or a designation of the origin of the material.

2. This rule does not apply to books containing the legislative bills and resolutions, the daily histories and daily journals of the Senate or Assembly, or Legislative Counsel Bureau material.

Rule No. 34. *Petitions and Memorials.*

The contents of any petition or memorial shall be briefly stated by the President or any Senator presenting it. It shall then lie on the table or be referred, as the President or Senate may direct.

Rule No. 35. *Objection to Reading of Paper.*

Where the reading of any paper is called for, and is objected to by any Senator, it shall be determined by a vote of the Senate, and without debate.

Rule No. 36. *Questions Relating to Priority of Business.*

All questions relating to the priority of business shall be decided without debate.

#### B. BILLS

Rule No. 37. *Requests for the Drafting of Bills, Resolutions and Amendments.*

The Legislative Counsel shall not honor a request for the drafting of a bill, resolution or amendment to be introduced in the Senate unless it is submitted by the Committee of the Whole, a standing committee, a Conference Committee or the Governor.

Rule No. 38. *Introduction of Bills.*

1. Except as otherwise provided in this rule, no bill or resolution may be introduced in the Senate unless it is first approved by the Committee of the Whole or a standing committee.

2. The provisions of subsection 1 do not apply to a bill or resolution that is:

- (a) Required to carry out the business of the Senate or the Legislature; or
- (b) Requested by the Governor.

3. Skeleton bills may not be introduced.

Rule No. 39. *Reading of Bills.*

1. Every bill must receive three readings before its passage, unless, in case of emergency, this rule is suspended by a two-thirds vote of the members elected to the Senate.

2. The first reading of a bill is for information, and if there is opposition to the bill, the question must be, "Shall this bill receive no further consideration?" If there is no opposition to the bill, or if the question to reject is defeated, the bill must then take the usual course.

3. No bill may be committed until once read, nor amended until twice read.

4. The third reading of every bill must be by sections.

Rule No. 40. *Second Reading File—Consent Calendar.*

1. All bills or joint resolutions reported by the Committee of the Whole or a standing committee must be placed on a Second Reading File unless recommended for placement on the Consent Calendar.

2. The Committee of the Whole or a standing committee shall not recommend a bill or joint resolution for placement on the Consent Calendar if:

- (a) An amendment of the bill or joint resolution is recommended;
- (b) It contains an appropriation;
- (c) It requires a two-thirds vote of the Senate; or
- (d) It is controversial in nature.

3. A bill or joint resolution must be removed from the Consent Calendar at the request of any Senator. A bill or joint resolution so removed must be immediately placed on the Second Reading File for consideration in the usual order of business.

4. When the Consent Calendar is called, the bills remaining on the Consent Calendar must be read by number and summary, and the vote must be taken on their final passage as a group.

Rule No. 41. *Reading of Bills—General File.*

1. Upon reading of bills on the Second Reading File, Senate and Assembly bills reported without amendments must be placed on the General File.

2. Only amendments proposed by the Committee of the Whole, a standing committee or a Conference Committee may be considered.

3. Amendments proposed by the Committee of the Whole or a standing committee and reported with bills may be adopted by a majority vote of the members present. Bills so amended must be reprinted, engrossed or reengrossed, and placed on the General File. The File must be made available to members of the public each day by the Secretary.

Rule No. 42. Reconsideration of Vote on Bill.

No motion to reconsider a vote is in order.

#### C. RESOLUTIONS

Rule No. 43. Treated as Bills.

Resolutions addressed to Congress, or to either House thereof, or to the President of the United States, or the heads of any of the national departments, or proposing amendments to the State Constitution are subject, in all respects, to the foregoing rules governing the course of bills. A joint resolution proposing an amendment to the Constitution shall be entered in the Journal in its entirety.

Rule No. 44. Treated as Motions.

Resolutions, other than those referred to in Senate Rule No. 43 of the 25th Special Session of the Legislature, shall be treated as motions in all proceedings of the Senate.

Rule No. 45. Order of Business.

1. Roll Call.
2. Prayer and Pledge of Allegiance to the Flag.
3. Reading and Approval of the Journal.
4. Reports of Committees.
5. Messages from the Governor.
6. Messages from the Assembly.
7. Communications.
8. [Reserved.]
9. Motions, Resolutions and Notices.
10. Introduction, First Reading and Reference.
11. Consent Calendar.
12. Second Reading and Amendment.
13. General File and Third Reading.
14. Unfinished Business.
15. Special Orders of the Day.
16. Remarks from the Floor; Introduction of Guests. A member may speak under this order of business for a period of not more than 5 minutes each day.

Rule No. 46. Privilege.

Any Senator may rise and explain a matter personal to himself by leave of the President, but he shall not discuss any pending question in such explanation.

Rule No. 47. Preference to Speak.

When two or more Senators rise at the same time, the President shall name the one who may first speak—giving preference, when practicable, to the mover or introducer of the subject under consideration.

Rule No. 48. Special Order.

The President shall call the Senate to order on the arrival of the time fixed for the consideration of a special order, and announce that the special order is before the Senate, which shall be considered, unless it be postponed by a two-thirds vote, and any business before the Senate at the time of the announcement of the special order shall go to Unfinished Business.

Senator Horsford moved the adoption of the resolution.

Remarks by Senator Horsford.

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

Thank you, Mr. President. Senate Resolution No. 1 provides for the adoption of the Senate Standing Rules for the Twenty-fifth Special Session. These rules are the same as the Senate Standing Rules which were adopted for the Twenty-fourth Special Session this summer. The Senate Standing Rules, again, provide for the creation of the Committee of the Whole and for such standing committees as we determine are necessary.

The Senators will recall in previous special sessions, we operated as a Committee of the Whole in order to expedite our business. When we get to that order of business, I will be appointing Senator Care to serve as the Chair of the Committee of the Whole.

Resolution adopted unanimously.

By the Committee of the Whole:

Senate Resolution No. 2—Providing that no allowances will be paid for the 25th Special Session of the Nevada Legislature for periodicals, stamps, stationery or communications.

Senator Horsford moved the adoption of the resolution.

Remarks by Senator Horsford.

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

Thank you, Mr. President. As is the tradition of the Senate, no allowances will be paid for periodicals, stamps, stationery during the Twenty-fifth Special Session.

Resolution adopted unanimously.

By the Committee of the Whole:

Senate Resolution No. 3—Providing for the appointment of attaches.

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That the following persons are elected as attaches of the Senate for the 25th Special Session of the Legislature of the State of Nevada: Loretta Arrington, Molly Dondero, Ken Evans, Susan Gaither, Jane Gill, Delia John, Lydia Lee, Evelyn Mattheus, Julie Mogensen, Ann-Berit Moyle, Mary R. Phillips, Jerry Pieretti, Sherry L. Rodriguez and Susan S. Whitford.

Senator Horsford moved the adoption of the resolution.

Remarks by Senator Horsford.

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

Thank you, Mr. President. We are fortunate to have an excellent legislative staff to work with us during this Special Session which we hope to be effective, efficient and expeditious as possible.

Resolution adopted unanimously.

#### INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Senate Bill No. 1—AN ACT relating to state financial administration; temporarily revising the provisions governing the disposition of revenue received by the State from the lease of federal lands; and providing other matters properly relating thereto.

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

Motion carried.

By the Committee of the Whole:

Senate Bill No. 2—AN ACT relating to state financial administration; accelerating the collection of the tax upon the net proceeds of minerals; requiring persons who extract minerals to pay the tax on the net proceeds of the estimated royalties that will be paid for that year; temporarily reducing various allowances for the collection of sales and use taxes and taxes on

intoxicating liquor, cigarettes and other tobacco products; temporarily requiring the distribution to the State of an additional portion of the recovery surcharge fee collected from short-term lessees of passenger cars; and providing other matters properly relating thereto.

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

Motion carried.

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

Senate in recess at 10:12 a.m.

#### SENATE IN SESSION

At 10:21 a.m.

President Krolicki presiding.

Quorum present.

#### MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, December 8, 2008

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 1.

DIANE M. KEETCH

*Assistant Chief Clerk of the Assembly*

#### MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 1—Adopting the Joint Rules of the Senate and Assembly for the 25th Special Session of the Legislature.

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the following Joint Rules of the Senate and Assembly for the 25th Special Session of the Legislature are hereby adopted:

##### APPLICABILITY OF JOINT RULES

*Rule No. 1. Generally.*

*The Joint Rules for the 25th Special Session of the Legislature are applicable only during the 25th Special Session of the Legislature.*

##### CONFERENCE COMMITTEES

*Rule No. 2. Procedure Concerning.*

*1. In every case of an amendment of a bill, or joint or concurrent resolution, agreed to in one House, dissented from in the other, and not receded from by the one making the amendment, each House shall appoint a committee to confer with a like committee to be appointed by the other; and the committee so appointed shall meet publicly at a convenient hour to be agreed upon by their respective chairmen and announced publicly, and shall confer upon the differences between the two Houses as indicated by the amendments made in one and rejected in the other and report as early as convenient the result of their conference to their respective Houses. The report shall be made available to all members of both Houses. The whole subject matter embraced in the bill or resolution shall be considered by the committee, and it may recommend recession by either House, new amendments, new bills or resolutions, or other changes as it sees fit. New bills or resolutions so reported shall be treated as amendments unless the bills or resolutions are composed entirely of original matter, in which case they shall receive the treatment required in the respective Houses for original bills, or resolutions, as the case may be.*

*2. The report of a conference committee may be adopted by acclamation, and such action may be considered equivalent to the adoption of amendments embodied therein. The report is not subject to amendment. If either House refuses to adopt the report, or if the first conference*

committee has so recommended, a second conference committee may be appointed. No member who served on the first committee may be appointed to the second.

3. There shall be but two conference committees on any bill or resolution. A majority of the members of a conference committee from each House must be members who voted for the passage of the bill or resolution.

#### MESSAGES

Rule No. 3. Procedure Concerning.

1. Proclamations by the Governor convening the Legislature in extra session shall, by direction of the presiding officer of each House, be read immediately after the convening thereof, filed and entered in full in the Journal of proceedings.

2. Whenever a message from the Governor is received, it shall be read and entered in full in the Journal of proceedings.

3. Messages from the Senate to the Assembly shall be delivered by the Secretary or Assistant Secretary, and messages from the Assembly to the Senate shall be delivered by the Chief Clerk or Assistant Chief Clerk.

#### NOTICE OF FINAL ACTION

Rule No. 4. Communications.

Each House shall communicate its final action on any bill or resolution, or matter in which the other may be interested, by written notice. Each such notice sent by the Senate must be signed by the Secretary of the Senate, or a person designated by the Secretary. Each such notice sent by the Assembly must be signed by the Chief Clerk of the Assembly, or a person designated by the Chief Clerk.

#### BILLS AND JOINT RESOLUTIONS

Rule No. 5. Signature.

Each enrolled bill or joint resolution shall be presented to the presiding officers of both Houses for signature. They shall, after an announcement of their intention to do so is made in open session, sign the bill or joint resolution and their signatures shall be followed by those of the Secretary of the Senate and Chief Clerk of the Assembly.

Rule No. 6. Joint Sponsorship.

1. A bill or resolution introduced by a committee of the Senate or Assembly may, at the direction of the chairman of the committee, set forth the name of a committee of the other House as a joint sponsor, if a majority of all members appointed to the committee of the other House votes in favor of becoming a joint sponsor of the bill or resolution. The name of the committee joint sponsor must be set forth on the face of the bill or resolution immediately below the date on which the bill or resolution is introduced.

2. The Legislative Counsel shall not cause to be printed the name of a committee as a joint sponsor on the face of a bill or resolution unless the chairman of the committee has signed his name next to the name of the committee on the colored back of the introductory copy of the bill or resolution that was submitted to the front desk of the House of origin or the statement required by subsection 4.

3. Upon introduction, any bill or resolution that sets forth the names of primary joint sponsors must be numbered in the same numerical sequence as other bills and resolutions of the same House of origin are numbered.

4. Once a bill or resolution has been introduced, a primary joint sponsor or nonprimary joint sponsor may only be added or removed by amendment of the bill or resolution. An amendment which proposes to add or remove a primary joint sponsor must not be considered by the House of origin of the amendment unless a statement requesting the addition or removal is attached to the copy of the amendment submitted to the front desk of the House of origin of the amendment. If the amendment proposes to add or remove a committee as a primary joint sponsor, the statement must be signed by the chairman of the committee. A copy of the statement must be transmitted to the Legislative Counsel if the amendment is adopted.

5. An amendment that proposes to add or remove a primary joint sponsor may include additional proposals to change the substantive provisions of the bill or resolution or may be limited only to the proposal to add or remove a primary joint sponsor.

#### PRINTING

Rule No. 7. Ordering and Distribution.



Each House may order the printing of bills introduced, reports of its own committees, and other matter pertaining to that House only; but no other printing may be ordered except by a concurrent resolution passed by both Houses. Each Senator is entitled to the free distribution of four copies of each bill introduced in each House, and each Assemblyman to such a distribution of two copies. Additional copies of such bills may be distributed at a charge to the person to whom they are addressed. The amount charged for distribution of the additional copies must be determined by the Director of the Legislative Counsel Bureau to approximate the cost of handling and postage for the entire session.

#### RESOLUTIONS

Rule No. 8. Types, Usage and Approval.

1. A joint resolution must be used to:
  - (a) Propose an amendment to the Nevada Constitution.
  - (b) Ratify a proposed amendment to the United States Constitution.
  - (c) Address the President of the United States, Congress, either House or any committee or member of Congress, any department or agency of the Federal Government, or any other state of the Union.
2. A concurrent resolution must be used to:
  - (a) Amend these joint rules.
  - (b) Request the return from the Governor of an enrolled bill for further consideration.
  - (c) Resolve that the return of a bill from one House to the other House is necessary and appropriate.
  - (d) Express facts, principles, opinion and purposes of the Senate and Assembly.
  - (e) Establish a joint committee of the two Houses.
  - (f) Direct the Legislative Commission to conduct an interim study.
3. A concurrent resolution or a resolution of one House may be used to:
  - (a) Memorialize a former member of the Legislature or other notable or distinguished person upon his death.
  - (b) Congratulate or commend any person or organization for a significant and meritorious accomplishment.

#### VETOES

Rule No. 9. Special Order.

Bills which have passed a previous Legislature, and which are transmitted to the Legislature next sitting, accompanied by a message or statement of the Governor's disapproval, or veto of the same, shall become the subject of a special order; and when the special order for their consideration is reached and called, the said message or statement shall be read, together with the bill or bills so disposed or vetoed; and the message and bill shall be read in the Senate by the Secretary of the Senate and in the Assembly by the Chief Clerk of the Assembly, without interruption, consecutively, one following the other, and not upon separate occasions; and no such bill or message shall be referred to any committee, or otherwise acted upon, save as provided by law and custom; that is to say, that immediately following such reading the only question (except as hereinafter stated) which shall be put by the Chair is, "Shall the bill pass, notwithstanding the objections of the Governor?" It shall not be in order, at any time, to vote upon such vetoed bill without the same shall have first been read; and no motion shall be entertained after the Chair has stated the question save a motion for "The previous question," but the merits of the bill itself may be debated.

#### ADJOURNMENT

Rule No. 10. Limitations and Calculation of Duration.

1. In calculating the permissible duration of an adjournment for 3 days or less, the day of adjournment must not be counted but the day of the next meeting must be counted, and Sunday must not be counted.
2. The Legislature may adjourn for more than 3 days by motion based on mutual consent of the Houses or by concurrent resolution. One or more such adjournments may be taken to permit a committee or the Legislative Counsel Bureau to prepare the matters respectively entrusted to them for the consideration of the Legislature as a whole.

#### EXPENDITURES FROM THE LEGISLATIVE FUND

Rule No. 11. Manner of authorization.

*Except for routine salary, travel, equipment and operating expenses, no expenditures shall be made from the Legislative Fund without the authority of a concurrent resolution regularly adopted by the Senate and Assembly.*

**RECORDS OF COMMITTEE PROCEEDINGS**

**Rule No. 12. Duties of Secretary of Committees and Director.**

1. Each committee shall cause a record to be made of the proceedings of its meetings.
2. The secretary of a committee shall:
  - (a) Label each record with the date, time and place of the meeting and also indicate on the label the numerical sequence in which the record was made;
  - (b) Keep the records in chronological order; and
  - (c) Deposit the records immediately following the final adjournment of the special session of the Legislature with the Director of the Legislative Counsel Bureau.
3. The Director of the Legislative Counsel Bureau shall:
  - (a) Index the records;
  - (b) Make the records available for accessing by any person during office hours under such reasonable conditions as he may deem necessary;
  - (c) Maintain a log as a public record containing the date, time, name and address of any person accessing any of the records and identifying the records accessed; and
  - (d) Retain the records for two bienniums and at the end of that period keep some form or copy of the record in any manner he deems reasonable to ensure access to the record in the foreseeable future.

**LIMITATIONS ON REQUESTS FOR  
DRAFTING OF LEGISLATIVE MEASURES**

**Rule No. 13. Germaneness Required for Amendments.**

1. The Legislative Counsel shall not honor a request for the drafting of an amendment to a bill or resolution if the subject matter of the amendment is independent of, and not specifically related and properly connected to, the subject that is expressed in the title of the bill or resolution.
2. For the purposes of this Rule, an amendment is independent of, and not specifically related and properly connected to, the subject that is expressed in the title of a bill or resolution if the amendment relates only to the general, single subject that is expressed in that title and not to the specific whole subject matter embraced in the bill or resolution.

**CONTINUATION OF LEADERSHIP OF THE SENATE  
AND ASSEMBLY DURING THE INTERIM  
BETWEEN SESSIONS**

**Rule No. 14. Tenure and Performance of Statutory Duties.**

1. Except as otherwise provided in subsections 2 and 3, the tenure of the President Pro Tem, Majority Leader and Minority Leader of the Senate and the Speaker, Speaker Pro Tem, Majority Floor Leader and Minority Floor Leader of the Assembly extends during the interim between regular sessions of the Legislature.
2. The Senators designated to be the President Pro Tem, Majority Leader and Minority Leader for the next succeeding regular session shall perform any statutory duty required in the period between the time of their designation after the general election and the organization of the next succeeding regular session of the Legislature if the Senator formerly holding the respective position is no longer a Legislator.
3. The Assemblymen designated to be the Speaker, Speaker Pro Tem, Majority Floor Leader and Minority Floor Leader for the next succeeding regular session shall perform any statutory duty required in the period between the time of their designation after the general election and the organization of the next succeeding regular session.

**POLICY AND PROCEDURES REGARDING  
SEXUAL HARASSMENT**

**Rule No. 15. Maintenance of Working Environment; Procedure for Filing, Investigating and Taking Remedial Action on Complaints.**

1. The Legislature hereby declares its intention to maintain a working environment which is free from sexual harassment. This policy applies to all Legislators and lobbyists. Each member

and lobbyist is responsible to conduct himself or herself in a manner which will ensure that others are able to work in such an environment.

2. In accordance with Title VII of the Civil Rights Act, for the purposes of this Rule, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment;

(b) Submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting the person; or

(c) Such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive working environment.

3. Each person subject to these Rules must exercise his own good judgment to avoid engaging in conduct that may be perceived by others as sexual harassment. The following noninclusive list provides illustrations of conduct that the Legislature deems to be inappropriate:

(a) Verbal conduct such as epithets, derogatory comments, slurs or unwanted sexual advances, invitations or comments;

(b) Visual conduct such as derogatory posters, photography, cartoons, drawings or gestures;

(c) Physical conduct such as unwanted touching, blocking normal movement or interfering with the work directed at a person because of his sex;

(d) Threats and demands to submit to sexual requests to keep a person's job or avoid some other loss, and offers of employment benefits in return for sexual favors; and

(e) Retaliation for opposing, reporting or threatening to report sexual harassment, or for participating in an investigation, proceeding or hearing conducted by the Legislature or the Nevada Equal Rights Commission or the federal Equal Employment Opportunity Commission,

↳ when submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting the person or such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive working environment.

4. A person may have a claim of sexual harassment even if he has not lost a job or some other economic benefit. Conduct that impairs a person's ability to work or his emotional well-being at work constitutes sexual harassment.

5. If a Legislator believes he is being sexually harassed on the job, he may file a written complaint with:

(a) The Speaker of the Assembly;

(b) The Majority Leader of the Senate; or

(c) The Director of the Legislative Counsel Bureau, if the complaint involves the conduct of the Speaker of the Assembly or the Majority Leader of the Senate.

↳ The complaint must include the details of the incident or incidents, the names of the persons involved and the names of any witnesses.

6. Except as otherwise provided in subsection 7, the Speaker of the Assembly or the Majority Leader of the Senate, as appropriate, shall refer a complaint received pursuant to subsection 5 to a committee consisting of Legislators of the same House. A complaint against a lobbyist may be referred to a committee in either House.

7. If the complaint involves the conduct of the Speaker of the Assembly or the Majority Leader of the Senate, the Director of the Legislative Counsel Bureau shall refer the complaint to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments of the Assembly or the Committee on Legislative Operations and Elections of the Senate, as appropriate. If the Speaker of the Assembly or the Majority Leader of the Senate is a member of one of these committees, the Speaker or the Majority Leader, as the case may be, shall not participate in the investigation and resolution of the complaint.

8. The committee to which the complaint is referred shall immediately conduct a confidential and discreet investigation of the complaint. As a part of the investigation, the committee shall notify the accused of the allegations. The committee shall facilitate a meeting between the complainant and the accused to allow a discussion of the matter, if both agree. If

*the parties do not agree to such a meeting, the committee shall request statements regarding the complaint from each of the parties. Either party may request a hearing before the committee. The committee shall make its determination and inform the complainant and the accused of its determination as soon as practicable after it has completed its investigation.*

*9. If the investigation reveals that sexual harassment has occurred, the Legislature will take appropriate disciplinary or remedial action, or both. The committee shall inform the complainant of any action taken. The Legislature will also take any action necessary to deter any future harassment.*

*10. The Legislature will not retaliate against a person who files a complaint and will not knowingly permit any retaliation by the person's supervisors or coworkers.*

*11. The Legislature encourages a person to report any incident of sexual harassment immediately so that the complaint can be quickly and fairly resolved.*

*12. Action taken by a complainant pursuant to this Rule does not prohibit the complainant from also filing a complaint of sexual harassment with the Nevada Equal Rights Commission or the federal Equal Employment Opportunity Commission.*

*13. All Legislators and lobbyists are responsible for adhering to the provisions of this policy. The prohibitions against engaging in sexual harassment and the protections against becoming a victim of sexual harassment set forth in this policy apply to employees, Legislators, lobbyists, vendors, contractors, customers and visitors to the Legislature.*

*14. This policy does not create any enforceable legal rights in any person.*

Senator Horsford moved the adoption of the resolution.

Remarks by Senator Horsford.

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

Thank you. Assembly Concurrent Resolution No. 1 provides for the adoption of the Joint Standing Rules of this Twenty-fifth Special Session. These rules are the same as the Joint Standing Rules of the Twenty-fourth Special Session that was held this summer.

Resolution adopted unanimously.

Resolution ordered transmitted to the Assembly,

Senator Horsford moved that for the remainder of the Twenty-fifth Special Session, all necessary rules be suspended, reading so far had considered second reading, rules further suspended, and that all bills and joint resolutions reported out of Committee of the Whole with a "do pass" be declared emergency measures under the Constitution and placed on third reading and final passage.

Remarks by Senator Horsford.

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

As everyone knows, declaring bills and joint resolutions emergency measures will speed up the legislative process of these measures by not having to comply with the three readings on three separate days' requirement of the Nevada Constitution.

Motion carried.

Senator Horsford moved that for the remainder of the Twenty-fifth Special Session all bills and resolutions that have been passed or adopted be immediately transmitted to the Assembly.

Remarks by Senator Horsford.

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

Thank you, Mr. President. Suspending this rule will allow all legislative measures to be sent to the Assembly immediately instead of waiting for the day's floor session to adjourn. However, immediately transmitting measures to the other House will eliminate the opportunity to

reconsider or rescind a final Senate action on the bill or resolution once the measure has been transmitted. The President will announce the transmittal of these measures before they leave the Senate.

Motion carried.

REMARKS FROM THE FLOOR

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

Pursuant to the provisions of NRS 281A.420(6), I am disclosing that I am an attorney with the law firm of Jones Vargas, several members of which firm are registered lobbyists. I am also a participant in the Public Employees Retirement System (PERS), having previously served as a county elected official. I also participate in the Public Employees Health Benefit Plan (PEHB) and pay my own premiums. I incorporate in this disclosure the disclosure I made in the previous regular session and request that it be printed in this day's Senate Journal along with this additional disclosure. I will file this also with the Legislative Director.

Pursuant to the provisions of NRS 281.501, the undersigned legislator, files with the Director of the Legislative Counsel Bureau (LCB) the following disclosure:

William J. Raggio is an attorney, duly licensed in the State of Nevada, and is a shareholder in the law firm of Jones-Vargas, with offices in Reno and Las Vegas, which firm represents clients who may have pecuniary interests in matters to be considered in this Legislative Session, and members of that firm, including, but not limited to the following: John P. Sande III, Joseph W. Brown, Anthony Sanchez, Michael Alonso, Michael Buckley, James Wadhams and Jesse Wadhams, may appear as registered lobbyists. All such individuals are duly registered in the LCB's list of lobbyists, including names of clients being represented, which list is by reference incorporated in this Disclosure Statement.

In addition, William J. Raggio serves as a member of the Board of Directors of Archon Corporation, a publicly traded company, which among other interests, owns and operates a licensed gaming facility in Laughlin, Nevada. The undersigned retired in May 2006 as a member of the Board of Directors of Sierra Health Services, a publicly traded company, and has been designated a Director Emeritus, an honorary position without vote or compensation, other than for certain health care benefits and limited travel expenses for attendance at one annual meeting.

The undersigned also serves as a member of two nonprofit entities: the Board of Trustees of E. L. Wiegand Foundation and as a Chairman of the Board of the Washoe County Education Foundation, Inc., which assists in raising funds for the purpose of the WCSD which are not otherwise funded.

The undersigned has made the prerequisite oral disclosure of this statement during the Senate floor session of February 15, 2007, and will make similar oral disclosures of this statement in all of the committee meetings in which I am an assigned member on or prior to February 20, 2007.

WILLIAM J. RAGGIO  
State Senator  
Washoe District 3

Senator Hardy requested that his remarks and his 2007 disclosure letter to the Director of the LCB be entered in the Journal.

I would disclose that I am the President of the Associated Builders and Contractors of Las Vegas which is a construction-trade association dealing in construction matters. My disclosure letters are on file with the Director. I will ask that those be reprinted for this Special Session. However, I will review each of the bills that we consider this Special Session. If any of them require an additional disclosure or abstention, I will make that disclosure at that time.

February 14, 2007

LORNE MALKIEWICH, *Director*  
Legislative Counsel Bureau

DEAR LORNE:

In accordance with subsection 6 of NRS 281.501, I hereby submit to you the following written statement of my disclosure regarding my employment.

I am the President of Associated Builders and Contractors of Las Vegas, a construction trade association. Associated Builders and Contractors of Las Vegas contracted for lobbying services with Randy Robison, Bill Gregory and Steve Hill for this Legislative Session. I am making this disclosure for matters on which Mr. Robison, Mr. Gregory or Mr. Hill lobby. I will be watchful for bills, resolutions and amendments affecting the construction industry. Having made this disclosure, pursuant to NRS 281.501, I will vote on such matters where the resulting benefit or detriment on our membership is not greater than that accruing to the members of any other such association.

I have made an oral disclosure of this information during the Senate Committee on Government Affairs hearing on February 14, 2007, when Senate Bill No. 13 was considered.

I ask that you retain a copy of this disclosure as a public record and make it available for public inspection in accordance with the provisions of subsection 6 of NRS 281.501. I understand that once I have filed this written statement with you, I am not required to disclose orally my interest when the matter is further considered by the Legislature or a committee thereof.

Sincerely,  
WARREN B. HARDY, II  
*Clark County Senatorial District No. 12*

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

Thank you, Mr. President. As to NRS 281A.420, I am going to incorporate the statement that I have on file giving my disclosures last session. I also want to state for the record that I have read the memorandum dated December 6 from Brenda Erdoes to all Legislators. It appears as though there is some tension between the Ethics Commission and the Legislative Branch as to the interpretation and application of the standards of NRS 281A.420. I do not know if the disclosure that I made is sufficient, so as the situation arises, I may make additional disclosures when we get into the Committee of the Whole.

It would appear that we do have some individuals out there who think a reasonable person exercising independent judgment after disclosures are made are not sufficient.

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

I also have read the memo, and I understand what is happening in the difference of opinion between the Executive Branch's Ethics Commission and the procedures and traditions that have been followed by the Legislature for many years. We need to respect what the Executive Branch feels are proper ethics' procedures. I will continue to operate in the same way I always have through disclosure. According to the Ethics Commission, our written procedures do not seem to work. Therefore, I will continue to disclose when appropriate if I feel that I have a conflict. My wife is a professor at the University of Nevada, Las Vegas. She receives a state salary. We also pay my health insurance premium through the state plan. Being an insurance advisor, I may have issues that could come up. I doubt that they will in this Special Session. Should I feel that there is something that I need to disclose to my colleagues about possible interests that I have, I will do so at that time.

Senator Carlton requested that her remarks and disclosure letter to the Director of the Legislative Counsel Bureau be entered in the Journal.

Thank you Mr. President. I would like to put on the record that my previous disclosure letter that is filed is still current. I am married to a state employee. I do participate in the Public Benefits Plan.

June 27, 2008

LORNE MALKIEWICH, *Director*  
Legislative Counsel Bureau  
DEAR LORNE:

In accordance with subsection 6 of NRS 281A.420, I hereby submit to you the following written statement of my disclosure regarding my employment with Great Basin Primary Care Association and my husband's employment with the Department of Public Safety:

I am employed as the Community Development Director at Great Basin Primary Care Association, which is a nonprofit corporation. GBPCA promotes access to health care for uninsured and other underserved populations. GBPCA is federally funded.

Therefore, I will be watchful for bills, resolutions and amendments that relate to health care which may raise a potential conflict of interest.

My husband is employed with the Department of Public Safety.

Therefore, I will be watchful for bills, resolutions and amendments that relate to the state employees, the Public Employees' Benefits Program, the Public Employees' Retirement System and other benefit programs available to public employees which may raise a potential conflict of interest.

I have made the prerequisite oral disclosure of this statement on the Senate floor on June 27, 2008. Therefore, I ask that you retain a copy of this disclosure as a public record and make it available for public inspection in accordance with the provisions of subsection 6 of NRS 281A.420. I understand that once I have filed this written statement with you, I am not required to disclose orally my interest when the matter is further considered by the Legislature or a committee thereof.

While I will not repeat this disclosure, I will consider each such matter individually to determine whether I am statutorily required to abstain from acting on the matter and will act accordingly.

Sincerely,  
MAGGIE CARLTON  
*Clark County Senatorial District No. 2*

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

Thank you, Mr. President. My wife is an assistant professor of the University System. As a public employee, we derive household income from that position, and I will update my disclosure letter with the Director for that position.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering various budget reduction plans and Senate Bills Nos. 1 and 2, with Senator Care as Chair of the Committee of the Whole.

Motion carried.

Senate in recess at 10:33 a.m.

#### IN COMMITTEE OF THE WHOLE

At 10:47 a.m.

Senator Care presiding.

Various budget reduction plans and Senate Bills Nos. 1 and 2 considered.

The Committee of the Whole was addressed by Senator Care, Chair; Gary L. Ghiggeri, Senate Fiscal Analyst; Senator Carlton; Senator Raggio; Senator Lee; Senator Coffin; Senator Rhoads; Brenda J. Erdoes, Legislative Counsel; Senator McGinness; Bjorn Selinder, Churchill and Eureka Counties; Senator Mathews; Senator Cegavske; Senator Hardy; Senator Nolan; Russell Guindon, Senior Deputy Fiscal Analyst; Carole Vilardo, Nevada Taxpayers Association; Bob Ostrovsky, Hertz Corporation, and Leslie Pitman, Rental Car Group.

SENATOR CARE (Chair):

The Committee of the Whole will come to order to discuss various budget reduction plans. You will find the standing rules in your information packet, and I would like us to adopt the

standing rules with the exception of number 5 which says the "secretary shall record the votes of the Committee members on all votes and motions." I take that to mean that would not allow a voice vote on whatever minor matters we may have before us. The first thing I would like to do is to hear a motion for the adoption of the rules.

1. A quorum consists of at least eleven members. A quorum is required to hear any bill or resolution. The Chair shall set the agenda for all meetings.

2. A majority of the full committee (11) is required to pass a bill or joint resolution.

3. A majority of the full committee is required for committee introduction of a bill. Committee introduction may be for accommodations only and is not to be construed as approval of the measure.

4. Committee action on bills or resolutions may occur during the hearing on that item, but shall be called up for separate action by the Chair. The Chair shall decide when an action or vote is to be taken by the Committee.

5. The secretary shall record the votes of the committee members on all votes and motions.

6. Cell phones and pagers must be muted during hearings.

7. Committee recesses shall be at the call of the Chair.

8. Members shall report promptly at the designated hour for committee meetings and for resumption of committee meetings.

9. Audio and video recordings of meetings may be purchased in the Publications/Gift Shop in the Nevada State Legislative Building.

10. Unless a committee member advises the Chair before a vote is taken on an amendment or bill on the floor of the Senate, it will be presumed that he or she will vote on the amendment or bill on the floor of the Senate consistent with his or her vote in the Committee.

Senator Coffin moved to adopt the rules.

Senator Townsend seconded the motion.

Motion carried unanimously.

SENATOR CARE:

The Senate as a whole is a deliberative body. I would like Gary Ghiggeri from the Fiscal Division to give us a briefing on what has happened since June when we last met concerning the present fiscal situation of the State of Nevada. I would like him to review the latest figures from the Economic Forum's projections and discuss what the staff has been looking at since last June and, in particular, those discussions from the more recent weeks.

The rules say that a member may speak for ten minutes at one time on the subject, but longer at the discretion of the Chair. It is not my intention to exercise that power unless things get out of hand. I do not anticipate that will happen. This is about the people's money, the people themselves and the future for so many of those people. It is important everyone has an opportunity to ask questions and to make comments they think are necessary for the record.

It is not my intention to call forward anyone who is representing an agency or a department; however, if a representative is here from an agency or a state department, they may come forward and make whatever comments are needed after Mr. Ghiggeri has spoken. Because we are talking about the public's money, and, in light of the e-mails, phone calls and letters we have all received, if there are members of the public who want to put comments on the record, that is fine. It may be necessary to limit those remarks to a short period. I ask that they do not repeat remarks made by someone else.

We will first discuss Senate Bill No. 1, then close that discussion and open the hearing on Senate Bill No. 2. We will vote on Senate Bill No. 1 and Senate Bill No. 2 after hearing all of the testimony and after the members of the Committee have had time to go over the material.

Are there any other comments before we begin?

Let us discuss what happened in June and what the Economic Forum did when it last issued its numbers on December 1. Explain how we came up with the numbers contained in these reports.



GARY L. GHIGGERI (Senate Fiscal Analyst):

As Senator Care indicated, in the 24th Special Session on June 27, there was a projected shortfall of \$275 million. The 24th Special Session reduced operating budgets by \$106 million. It reduced funding from other sources such as the textbooks in the Distributive School Account (DSA) by \$47.9 million. It swept funding from various reserve accounts in order to arrive at the \$275.4 million reduction. It was approved at that time. Since that time, the economy has continued to worsen. A copy of the Economic Forum's revenue projections for the balance of the fiscal year (FY) 2009 and for FYs 2010 and 2011 has been provided to you.

The Economic Forum has projected the General Fund Revenues for FY 2009 will be approximately \$2.8 billion. That is a 9.1-percent reduction from the actual revenue that was received in FY 2008. The FY 2008 Actual General Fund Revenue was slightly over \$3 billion.

The Economic Forum is projecting a slight increase in revenue in FY 2009 compared to the FY 2005 Actual Revenues received by the State General Fund. In FY 2010, the Economic Forum projects \$2.8 billion, a 0.2 percent increase. For FY 2011, the projection is \$2.9 billion, a 3.3 percent increase. For FYs 2010 and 2011, the General Fund Revenues are projected below what was actually received in FYs 2006, 2007 and 2008.

The next report we will discuss is titled "Estimated General Fund Shortfall and Proposed Reductions." The unappropriated State General Fund Balance on July 1, 2007, which was the anticipated revenues or funds that would have been brought forward for FY 2007 to 2008, was approximately \$23.8 million less than what was approved by the 2007 Legislature. General Fund Revenues projected to be approximately \$980.9 million less than what was approved by the Legislature during the 74th Legislative Session and projected by the Economic Forum on May 1, 2007. The Actual Revenues in FY 2008 were \$239.9 million less than what the Economic Forum projected. The projected revenues as approved by the December 1, 2007, Economic Forum are approximately \$741 million less than what was projected by the May 1 Economic Forum.

The actual reversion shortfall in FY 2008 was \$16.9 million, and we are currently projecting the shortfall in reversions in FY 2009 to be \$50 million for a total of \$66.9 million.

The shortfall in total for the State resources is \$1,071,000,000. The DSA Supplemental shortfall of \$315,593,187 is driven by the shortfall in collections of the Local School Support Tax over this biennium. There is an additional projected Supplemental Appropriation need of \$92,399,056. Of that amount, approximately \$70 million is the projected supplemental for the DSA. There is a \$15 million projected supplemental need for the Division of Child and Family Services.

The \$2.7 million Adjustment to Fund Balance represents refunds that were approved to, primarily, gaming establishments where taxes were paid to the State in excess and returned to those establishments. That gives a total reduction of \$410 million for a total shortfall, as projected, at this time, of \$1,482,000,000.

Two items considered to solve the budget shortfall are the \$5.1 million for the Sawyer Office Building settlement and the transfer of the Bond Interest and Redemption Account of \$18 million.

State General Fund Budget Reductions and Solutions that have been implemented to date are a \$267 million transfer from the Rainy Day Fund, a \$671.8 million in one-shot operating reductions and \$90.4 million in fund transfers.

Solutions that will be considered during this 25th Special Session. are non-General Fund revenue sources of \$76.7 million, a line of credit of \$160 million, additional budget reductions of \$72.8 million and increased revenues of \$32.2 million. That is approximately \$1.4 billion in additional resources proposed to address the shortfall.

Also included is the \$47.9 million reduction to the textbook fund approved by the 24th Special Session.

A repeal of the transfer of the Rainy Day Fund that was approved by the 24th Special Session of \$36 million, the one-time deferral of \$7.6 million of the transfer from the Unclaimed Property Fund in the Millennium Scholarship Account and the reduction of the transfer of the Disaster Relief Account. That account receives funding from the interest income in the Rainy Day Fund. Because the Rainy Day Fund is nearly drained at this time, we do not anticipate any additional transfers this fiscal year. The amount projected was \$253,000 transferred at the close of the first quarter of FY 2009.

The Proposed and Adopted Solutions to address the projected shortfall total approximately \$1.487 billion.

SENATOR CARE:

I know there has been a lot in the paper and on television about this, but leadership in both Houses and the Governor, with members of the Governor's staff—Mr. Clinger and others—have had a number of in-depth on-going discussions about what we should do about these projected shortfalls. The remaining handout is a framework of where those discussions took us.

Mr. Ghiggeri will go through those items listed in the report titled "Potential Solutions to Address the Projected General Fund Revenue Shortfall in Fiscal Year 2009."

MR. GHIGGERI:

The projected additional General Fund shortfall is \$337 million in this report. Potential solutions are noted which include non-General Fund sources of \$76.6 million, a line of credit of \$160 million, additional budget reductions of \$72.8 million and additional revenue adjustments of \$32.2 million for a total of \$341.7 million.

One of the non-General Fund sources to solve the budget shortfall is the one-time reversion of Insurance Verification Funds to the General Fund. This is from the Department of Motor Vehicles Insurance Verification Account. Historically, those funds revert to the Highway Fund. This would provide for a one-time transfer of those remaining funds to the General Fund instead of the Highway Fund at the close of FY 2009. That transfer is estimated at \$14 million. Last year, \$13.6 million went to the Highway Fund from that source. Also proposed is a one-time reversion of unused Pollution Control Funds in excess of the \$1 million minimum-reserve level to the General Fund. That Pollution Control Fund is currently being used by Clark County and Washoe County district health departments for air pollution or air-quality programs.

SENATOR CARLTON:

Do we have a breakdown on the how the money is spent for Clark and for Washoe separately?

MR. GHIGGERI:

I do not have those figures with me, but a large percentage goes to Clark County.

SENATOR CARLTON:

Is it fair to say that the majority of the funds go to Clark County?

MR. GHIGGERI:

Yes.

SENATOR RAGGIO:

It is my recollection that it is about a 3:1 ratio, three parts to Clark County and one part to Washoe County.

MR. GHIGGERI:

Transfer of funds from the Emergency Assistance Sub-account to the General Fund is proposed. There is a current balance in that account of \$1.28 million.

Estate Tax Funds in reserve at the Nevada System of Higher Education in the amount of \$4 million are proposed to be transferred to the General Fund.

Maintenance projects funded with Special Higher Education Capital Construction Funds as utilized by the Nevada System of Higher Education to the General Fund are proposed for reduction. These are funds collected on slot machines. They were collected in FY 2009. Historically, the University has been able to utilize approximately \$2.5 million per year for maintenance projects within the University System. If this were done, staff would recommend that for the 2009 Capital Improvement Programs that provides this funding be substituted with general obligation bonds so as not to reduce the amount of funding available to the University System for maintenance projects. The University System receives approximately \$2.5 million per year from this source and \$5 million per year from the Higher Education Capital Construction Funds for maintenance projects. It is about \$7.5 million per year.

A transfer of \$25 million from the Indigent Accident Account to the Medicaid program to utilize that funding for Medicaid program costs is proposed.

Also proposed is a temporary suspension of the sharing mineral land-lease revenues in excess of \$7 million per year with counties that deposit that money in the DSA.

A transfer of \$800,000 from the reserve of the account that provides the communications devices to those who are hard of hearing is proposed. There is currently a reserve in that account of \$2.6 million, and it is anticipated that at the end of this fiscal year there will be a reserve of \$2.4 million.

A transfer of \$250,000 is proposed from the Homeowner's Disaster Relief Account. It currently has about \$645,000.

A transfer of \$3.5 million is proposed from the Low Income Housing Trust Fund. There is a reserve of \$12.8 million in that account.

A transfer of \$550,000 for the Manufactured Housing Education and Recovery Fund is proposed. The reserve in that account is about \$560,000 with cash in that account of \$623,000.

A transfer of \$259,000 from the Consumer Affairs Recovery Fund is proposed. The reserve in that account is \$293,000 with cash available of \$271,000.

A transfer of \$800,000 from Public Utilities Commission Reserve (PUC). The reserve in that account is about \$3.5 million.

A transfer of \$3 million from the Attorney General, Unfair Trade Practices is proposed. The current balance in that account is about \$4 million, and the current statute provides that any funding in that account in excess of \$450,000 be reverted to the General Fund at the close of the fiscal year. No legislation is required for that transfer.

A transfer of \$3.5 million from the Silicosis and Disabled Pensions Fund is proposed. The current balance in that fund is about \$3.8 million. This fund received its initial appropriation via S.B. 330 of the 58th Session. The current statute provides that the reversion of that money be made to the General Fund when people who are eligible to receive benefits from that fund and their dependents are no longer drawing funds. For the Committee's information, in FY 1999, \$185,000 was paid in benefits and in FY 2008, about \$75,000 was paid in benefits. The payments have been steadily decreasing over the past few years.

A sweep of \$5 million from the Millennium Scholarship Account is proposed.

That concludes the funding proposals from the non-General Fund sources of \$76.6 million.

SENATOR LEE:

Could we go over item 16 again? A traditional sweep is interest. Can you go over the principle of this account?

MR. GHIGGERI:

Currently, we are projecting the Millennium Scholarship sweep of \$5 million and the nontransfer of the \$7.6 million that was adopted by the 24th Special Session will be funding sufficient to operate this program through FY 2015 if no additional funds are taken from this.

SENATOR LEE:

My banking experience tells me that at the end of the business day, this sweep is something that is swept into an interest-bearing account. There is higher interest from it, like a checking account, and it is swept back into the account on a Monday morning. This is a tool to earn higher interest over the weekend. Is this sweep a borrow or a loan?

MR. GHIGGERI:

It is a sweep, a taking of the funds.

SENATOR LEE:

It is a taking?

MR. GHIGGERI:

It is a transfer of those funds to the General Fund to assist in meeting the projected shortfall.

SENATOR LEE:

Never to be swept back?

MR. GHIGGERI:

That is for consideration by future legislative sessions if the financial situation of the State improves.

SENATOR COFFIN:

I do not see any documentation on the negative impacts to programs. The negotiating team did its best to try to minimize harm. Do we know if these last withdrawals are from money found anywhere that will cause harm to individuals? Will we increase the waiting lists if we take all of this money?

MR. GHIGGERI:

Of the items I have discussed, there is no anticipation, at this time, that there would be an increase in a waiting list because these funds are not utilized to provide services. For example, in the Devices for Persons with Communications Difficulties Account, there is a current surcharge of 3 cents per line, which reflects a reduction from 8 cents per line in FY 2005. Spending the reserve down in that account takes some of that reserve away. They will not have that funding to spend down, which would necessitate an increase in the surcharge at a time sooner than what was originally anticipated.

There may be claims made against the Disaster Relief Account that would not be able to be paid. On the remaining items, we have tried not to take funding that would hamper the operation of the program.

In the PUC reserves, there might be a need to adjust the mil assessment earlier than had been anticipated by the PUC. They will not have the reserve to spend down since we are taking the funds from that.

In the Silicosis Disabled Fund, there is nearly \$3.9 million. The sweep takes \$3.5 million. They would have enough money, based on the expenditures in FY 2008, to make payments for another three years. It may require infusion of General Fund dollars sometime in the future.

The same situation exists with the Millennium Scholarship Fund. If the Legislature wants to continue that program beyond 2015, there will have to be an infusion of cash into that program. In 2005, the Legislature provided a one-time infusion of cash into the Millennium Scholarship program.

That is all I can offer on these items.

A line of credit for \$116 million is proposed to be established. This would only be accessed when needed based on cash flow or when funding is required to pay bills.

Additional budget reductions takes funding that was provided for the Caliente Rail Siding Trans Loading Facility of \$300,000, the city of Carlin's Industrial Park of \$386,000 and Northern Nevada Development Rural Regional Incubator of \$330,000. Senate Bill 1 of the 22nd Special Session provided funding for those items.

SENATOR RAGGIO:

Before we leave the item establishing the line of credit, we should have the record indicate that the request was made by the group that met with the Governor to fashion a shortfall solution that we receive a formal opinion from the Legislative Counsel Bureau. The Governor requested a similar opinion from the Attorney General's Office. It is our understanding that both opinions were delivered, and they indicate that this is constitutional and does not violate the constitutional prohibition on borrowing. They should be made part of the record.

December 4, 2008

SENATOR RANDOLPH J. TOWNSEND

P.O. Box 20923

Reno, NV 89515-0923

DEAR SENATOR TOWNSEND:

You have asked whether it is constitutional to authorize the State of Nevada to borrow money by means of a line of credit extended from the Local Government Pooled Investment Fund, which is created pursuant to NRS 355.167. The proposed legislation to carry out this financing method has been drafted to authorize investment of money in the Fund in one or more notes of the State of Nevada that would be issued pursuant to the provisions of the State

Securities Law, NRS 349.150 to 349.364, inclusive. Therefore, those notes would be state securities that are backed by the full faith and credit of the State of Nevada. Because the manner in which the line of credit is implemented is critical to any analysis of constitutionality, this opinion essentially addresses the constitutionality of the attached bill draft which implements the line of credit.

Section 3 of Article 9 of the Nevada Constitution provides, in pertinent part, that:

The State may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the sum of two per cent of the assessed valuation of the State, as shown by the reports of the county assessors to the State Controller, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

The Nevada Supreme Court has stated that a public debt is created for the purposes of Section 3 of Article 9 of the Nevada Constitution "when an obligation binds future Legislatures to successive appropriations." Employers Ins. Co. v. State Bd. of Exam'rs, 117 Nev. 249, 254 (2001). "An agreement to expend monies from currently appropriated funds does not implicate" this constitutional provision. Id. Because the attached bill draft pledges the full faith and credit of the State of Nevada to pay back the notes and does not require full repayment of those notes until 2013, it is the opinion of this office that the notes constitute a debt of the State for the purposes of Section 3 of Article 9 of the Nevada Constitution. Because the notes constitute a debt of the State of Nevada for the purposes of Section 3 of Article 9 of the Nevada Constitution, that constitutional provision imposes several restrictions on their issuance.

First, except for defraying certain specified extraordinary expenses, Section 3 of Article 9 limits the total amount of debt of the State, exclusive of interest, to not more than "two percent of the assessed valuation of the State, as shown by the reports of the county assessors to the State Controller." The attached bill draft limits to \$160 million the aggregate principal amount that may be borrowed by the State through the issuance of the notes. The Fiscal Analysis Division of the Legislative Counsel Bureau has indicated to this office that a debt of \$160 million would not cause the State to exceed the constitutional debt limitation set forth in Section 3 of Article 9.

Second, Section 3 of Article 9 requires that the State's public debt be authorized by law for a specific purpose that must be "distinctly specified" in the authorizing law. The attached bill draft requires that the proceeds from the sale of the notes be "used for the general operation of the State." Because the bill draft distinctly specifies the purpose for which the proceeds of the notes will be used, it is the opinion of this office that the bill draft complies with the requirement of specifying a purpose set forth in Section 3 of Article 9.

Third, Section 3 of Article 9 requires that the law authorizing the debt:

[P]rovide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed nor the taxes postponed or

diminished until the principal and interest of said debts shall have been wholly paid.

Thus, the law authorizing the debt must provide for: (1) the levying of a tax to pay the interest on and principal of the debt; (2) the repayment of the debt within 20 years after its incurrence; (3) the appropriation of the proceeds of the tax to the payment of the interest on and principal of the debt; and (4) a prohibition against the repeal of the appropriation of the tax or the postponement or diminution of the tax until the interest on and principal of the debt has been repaid.

As indicated previously, the line of credit authorized by the attached bill draft will be issued as notes pursuant to the State Securities Law. With respect to the inclusion of an annual tax in the authorizing law, NRS 349.238, a provision of the State Securities Law, requires the levy of a special property tax annually to pay the interest on and pay and retire securities issued as general obligations of the State. NRS 349.238 states that:

1. There must be levied annually a special tax on all property, both real and personal, subject to taxation within the boundaries of the State of Nevada, fully sufficient together with the revenue which will result from application of the rate to the net proceeds of minerals, without regard to any statutory limitations now or hereafter existing, to pay the interest on the general obligation state securities and to pay and retire the securities as provided in the State Securities Law and in any act supplemental hereto. The amount of money to be raised by the tax must be included in the annual estimate or budget for each county in the state for each year for which the tax is hereby required to be levied. The tax must be levied and collected in the same manner and at the same time as other taxes are levied and collected.

2. The proceeds thereof levied to pay interest on the securities must be kept by the State Treasurer in a special fund, separate and apart from all other funds, and the proceeds of the tax levied to pay the principal of the securities must be kept by the Treasurer in a special fund, separate and apart from all other funds. The two special funds must be used for no other purpose than the payment of the interest on the securities and the principal thereof, respectively, when due.

If the amount of available revenues from such a special property tax are insufficient to pay money due on a state security issued as a general obligation, NRS 349.242 requires payment of the amount due from the State General Fund, subject to subsequent reimbursement from the special tax revenues. NRS 349.244 also authorizes the application of other available sources of money of the State other than taxes, with a corresponding diminution of the special tax, to pay the interest on and principal of state securities issued as general obligations. *See State Gen. Obligation Bond Comm'n v. Koontz*, 84 Nev. 130 (1968) (holding that NRS 349.244 does not violate Section 3 of Article 9, which prohibits the postponement or diminution of taxes until the principal and interest of the State is wholly paid, because such an interpretation would frustrate, rather than further, the purpose of the constitutional provision, which is to avoid the State defaulting on its obligations). Therefore, it is the opinion of this office that the bill draft meets the constitutional requirement of providing for the levy of a tax to pay the interest on and principal of the notes through the incorporation of NRS 349.238 to 349.244, inclusive, in the bill draft.

In addition, Section 3 of Article 9 requires that the law authorizing the debt provide for payment of the debt within 20 years. The attached bill draft specifies that the notes would be repaid fully by August 31, 2013. Because the bill draft requires repayment of the notes within approximately 4 years after their issuance, it is the opinion of this office that the bill draft complies with the deadline for repayment set forth in Section 3 of Article 9.

Finally, pursuant to Section 3 of Article 9, the legislation authorizing the debt is required to provide for the appropriation of the proceeds of the special tax to the payment of the interest on and principal of the debt and to prohibit the repeal of the appropriation of the tax or the postponement or diminution of the tax until the interest on and principal of the debt has

been repaid. As mentioned previously, the notes are required to be issued pursuant to the State Securities Law. NRS 349.248, which is a provision of the State Securities Law, provides that:

There is by the State Securities Law, and there shall be by resolution authorizing the issuance of any indebtedness contracted in accordance with the provisions of the State Securities Law, specially appropriated the proceeds of such taxes to the payment of such principal and interest; and such appropriations shall not be repealed nor the taxes postponed or diminished (except as herein otherwise expressly provided) until the principal of and interest on the state securities evidencing such debt have been wholly paid.

Because the attached bill draft incorporates NRS 349.248, it is the opinion of this office that the bill draft meets the constitutional requirements of specially appropriating the proceeds of the tax to the payment of the interest on and principal of the notes and of prohibiting the repeal of the appropriation of the tax or the postponement or diminution of the tax until the interest on and principal of the notes have been repaid.

The Nevada Constitution also contains a "balanced budget" requirement. Subsection 1 of Section 2 of Article 9 of the Nevada Constitution provides that:

The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

On its face, this constitutional provision does not appear to allow the incurrence of state debt that is not repaid within 1 year.

The Nevada Supreme Court has addressed the interplay between the "balanced budget" requirement of Section 2 of Article 9 and the authority of the State to incur debt of not more than 20 years' duration in Section 3 of Article 9 in Klein v. Kinkead, 16 Nev. 194 (1881). In that case, the Court considered various challenges to an act passed by the Legislature requiring the construction of an insane asylum near Reno, Nevada. Id. at 200. To pay for the construction, a loan of \$80,000 was made from the state school fund, guaranteed by state bonds. Id. In finding that the indebtedness was constitutional, the Nevada Supreme Court stated:

The authority to create a bonded debt is subject to no restrictions or conditions whatever save that such debt shall not exceed the sum of three hundred thousand dollars, and the law authorizing it shall provide for its payment within twenty years by taxation. The constitution nowhere declares the necessity which shall exist as prerequisite to the issuance of bonds or the making of a loan under this section, nor the use to which money obtained by such loan shall be applied. From the language employed by the instrument itself, as well as from the debate in the convention upon those portions of the constitution relating to state finances, the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, notwithstanding financial exigencies, without resorting to onerous taxation.

For the first three years subsequent to the adoption of the constitution, the legislature was restricted from levying a tax for state purposes exceeding one per cent. per annum. (Sec. 24, art. XVII.) In the discussion of this restriction in the constitutional convention it was in several instances urged that if this rate of taxation failed to produce the necessary revenue to defray the expenses of the state, relief could be had by the issuance and sale of the bonds of the state to the amount of three hundred thousand dollars, under the provisions of section 3 of article IX. No

suggestion was ever made, so far as appears from the debates, of the right of the legislature to seek relief at any time by this means. It has the power to direct the issuance of bonds under this clause at any time so long as it does not conflict with the limitation as to amount.

Id. at 204-05. Thus, it is the longstanding interpretation of the Nevada Supreme Court that the "balanced budget" requirement of Section 2 of Article 9 does not limit the authority of the State to create indebtedness that is not repaid within 1 year. The restrictions on the creation of that indebtedness are set forth in Article 3 of Section 9. The interpretation of these constitutional provisions, which was adopted by the Nevada Supreme Court in 1881 and is of continuing validity, requires that the state budget be funded in a manner which ensures that all current financial obligations of the State are met in a timely fashion but which, subject to the two percent constitutional debt limitation, also allows the State to incur debt that will require ongoing appropriations by future Legislatures.

In conclusion, it is the opinion of this office that it is constitutional for the Legislature to authorize the State Treasurer, on behalf of the State of Nevada, to develop a line of credit or otherwise borrow money by means of the issuance of notes pursuant to the State Securities Law, in which the Local Government Pooled Investment Fund is specifically authorized to invest.

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 \_\_\_\_\_  
 EILEEN O'GRADY  
*Chief Deputy Legislative Counsel*

December 5, 2008

CHRISTOPHER NIELSEN, *General Counsel*  
 State of Nevada  
 Office of the Governor  
 Capitol Complex  
 Carson City, Nevada  
 DEAR MR. NIELSEN,

You have requested an opinion from this office regarding the constitutionality of the plan proposed by Treasurer Kate Marshall to borrow money from the Local Government Pooled Investment Fund, particularly with regard to Article IX of the Nevada Constitution. This opinion is based on the attached bill draft, which was provided to this office on December 4, 2008.

#### BACKGROUND

There is an approximate \$330 million shortfall estimated for the fiscal year ending June 30, 2009. Treasurer Kate Marshall has proposed a plan to help balance the budget by borrowing up to \$160 million from the Local Government Pooled Investment Fund (Fund).

The Fund was created by NRS 355.167, and is administrated by the State Treasurer. The Fund permits local governments to pool their money for investment purposes. NRS 355.167(2). The money is deposited with the Treasurer, who invests the money in any investments approved by law. NRS 355.167(3). Approved investments include, but are not limited to: U.S. bonds, Treasury notes and bills, and negotiable CDs. *See* NRS 355.170(1). Additionally, the Fund may invest in "[s]ecurities which have been expressly authorized as investments for local governments by any provision of Nevada Revised Statutes or by any special law." NRS 355.170(1)(f).

Treasurer Marshall's plan provides for a "line of credit" from the Fund to pay for the State's operating expenses. The plan would permit the State to borrow money from the Fund by issuing one or more notes to the Fund with an aggregate principal amount not to exceed \$160 million. The principal amount of any note or notes would bear interest monthly at a rate



of approximately 2.25%. This is approximately 0.25% greater than the Fund's current average monthly earning. No money could be borrowed after August 31, 2009.

The plan also provides that the principal amount borrowed will be repaid in installments, with not less than 25% of the total principal amount borrowed repaid by August 31, 2010, at least 50% of the total principal repaid by August 31, 2011, at least 75% of the principal repaid by August 31, 2012, and all of the principal repaid by August 31, 2013.

The notes would be issued pursuant to a contract between the State and the Fund, under which the Fund would agree to invest in the notes. The Governor would execute such contracts on behalf of the State, and the Treasurer would execute them on behalf of the Fund. The notes would be sold to the Fund at an amount equal to the principal amount borrowed.

The note or notes issued would be general obligations of the State. The full faith and credit of the State would be pledged to the payment of the principal and interest on the note or notes. They would be issued on the order of the Treasurer, according to the State Securities Law (NRS 349.150 to 349.364). The proceeds from the sale of any notes will be deposited in the general fund and used for general operations of the state.

#### ANALYSIS

Paragraph 1 of Article IX, Section 2 of the Nevada Constitution provides:

The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

Nev. Const. Art. 9, § 2(1).

Section 3 of Article 9 provides in pertinent part:

The State may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the sum of two per cent of the assessed valuation of the State, as shown by the reports of the county assessors to the State Controller, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

Nev. Const. Art. 9, § 3.

The purpose of the debt limitation provisions in Article 9, Section 3 is to prevent heavy borrowing by the State. *Employers Ins. Co. of Nevada v. State Bd. of Examiners*, 117 Nev.

249, 254, 21 P.3d 628, 631 (2001). Prior to 1840, other states borrowed considerable funds to finance railroads and internal improvements, only to default after the depression of 1837. *Id.* Nevada, like other states which joined the union after 1840, included this debt limitation provision in the constitution to prevent this situation. *Id.* Article 9, Section 3 therefore limits the public indebtedness to no more than 2% of the assessed valuation of the State. It also requires that the purpose or purposes of the debt must be distinctly specified, that the obligations be repaid in no more than 20 years, and that the act contracting for public debt must provide for a the levying of a tax to repay the obligations. Nev. Const. Art. 9, § 3.

Early in the State's history, the Nevada Supreme Court considered these requirements of Article 9, Section 3, as well as several issues relevant to borrowing from special funds. In *Klein v. Kinkead*, 16 Nev. 194 (1881), the Legislature passed a bill to issue bonds in the principal amount of \$80,000 to the state school fund, for the purpose of building an insane asylum. *Id.* at 200. The bonds would be signed by the governor and the state controller, and countersigned by the state treasurer. *Id.*

The act in *Klein* was challenged numerous grounds, including that taking money from the state school fund to build the asylum unlawfully diverted money away from the fund, to be used for a different purpose. *Id.* at 206. The state school fund was to be for the schools, and could be invested only in U.S. bonds or bonds of the State. *Id.* The court rejected this argument, finding that the asylum bonds were indistinguishable from other bonds of the State that were issued prior, and in which the state school fund was clearly permitted to invest. *Id.* at 207. The court characterized the asylum bonds as investments for the school fund, not as diverting or taking money from the fund. *Id.*

It was also argued that the act was unconstitutional because Section 3 of Article 9 permitted the Legislature to incur public debt only when the State's expenses exceeded its revenues, as provided in Section 2 of Article 9, a situation that apparently did not exist at the time. *Id.* The court rejected this contention, holding that Section 2 imposed no limitations on borrowing under Section 3. *Id.* at 204. It stated:

The authority to create a bonded debt is subject to no restrictions or conditions whatever save that such debt shall not exceed the [limit], and the law authorizing it shall provide for its payment within twenty years by taxation. The constitution nowhere declares the necessity which shall exist as prerequisite to the issuance of bonds or the making of a loan under this section, nor the use to which money obtained by such loan shall be applied.

*Id.* at 204-05.

Treasurer Marshall's plan is similar to that approved by the Nevada Supreme Court in *Klein*. First, as the court made clear in that case, the issuance of notes to the Fund does not unlawfully divert money from the Fund. Like the state school fund in *Klein*, the Fund will receive a return on the notes 0.25% greater than the returns it receives on its other investments. It will therefore ultimately benefit from investing in the notes, which are backed by the full faith and credit of the State. Second, the "balanced budget" requirement of Article 9, Section 2 does not prohibit the State from contracting for public debt that will be not be repaid within two years for the purposes of funding its current expenses. In fact, as the court in *Klein* explained: "...the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, notwithstanding financial exigencies, without resorting to onerous taxation." 16 Nev. at 205.

Turning back to Article 9, Section 3, Treasurer Marshall's plan meets all of this section's requirements as well. The plan contemplates that the notes will be general obligations of the State, issued pursuant to the Nevada State Securities Law, and that they will be repaid no later than 2013. The notes are therefore "public debt" within the meaning and limitations of Article 9, Section 3. See *Morris v. Board of Regents of University of Nevada*, 97 Nev. 112, 114-15, 625 P.2d 562, 563-64 (1981) (a public debt is created when the tax revenues of the state are liable for the repayment of the obligation and subsequent legislatures are bound to continue the tax at least at its present level until the obligation is paid). We are advised that notes

issued up to the maximum principal of \$160 million will not exceed the State's current bonding capacity. Therefore the plan will not result in a violation of Article 9, Section 3's limitation on public indebtedness.

Like the act in *Klein*, Treasurer Marshall's plan plainly states the purpose of the debt: to fund general operations of the state, on an as-needed basis, up to a principal amount of \$160 million. The plan also provides for the repayment of the notes within twenty years. In fact, it provides for repayment of the notes by 2013, considerably sooner than required by Article 9, Section 3.

Finally, by incorporating the State Securities Law, Treasurer Marshall's plan effectively provides for a taxing source to repay the notes. The State Securities Law provides that general obligations of the State must be paid through a special tax on property. NRS 349.238. By reference to the State Securities Law, the plan satisfies Article 9, Section 3's requirement that the act provide for taxes to repay the obligations, even though the plan does not explicitly impose a tax.

This office addressed a similar situation in Op. Nev. Att'y Gen. No. S-3 (August 24, 1962). In that opinion, the Attorney General determined that a legislative act providing for a bond issue and stating that the bonds would be repaid from the consolidated bond interest and redemption fund met the requirement of Article 9, Section 3 that the act levy a tax for repayment of the obligations. The consolidated bond interest and redemption fund was created by NRS 349.120, and provided that the legislature must appropriate to the fund sufficient monies to service the bonds. The Attorney General reasoned that this statute provide for the necessary appropriations to repay the bonds, and that it was immaterial that a provision for the levying of a tax was in a different act. The same situation exists here. Reference to the State Securities Law provides for the necessary tax and appropriations for the repayment of the notes.

#### CONCLUSION

To conclude, our office is of the opinion that the line-of-credit plan proposed by Treasurer Marshall to issue notes up to a principal amount of \$160 million to the Local Government Pooled Investment Fund does not violate Article 9 of the Nevada Constitution.

Sincerely,  
CATHERINE CORTEZ MASTO  
Attorney General  
By: \_\_\_\_\_  
JAMES T. SPENCER  
Chief of Staff  
(775) 684-1200

SENATOR CARE:

Thank you, I will have them made a part of the record. I have a copy of the 1881 Supreme Court case that has decided in both opinions. I will have that entered into the record as well.

[No. 1,080.]

JACOB KLEIN, APPELLANT, v. JOHN H. KINKEAD,  
GOVERNOR, ET AL., RESPONDENTS.

STATUTE TO EMBRACE BUT ONE SUBJECT—SECTION 17 OF ARTICLE IV. OF THE CONSTITUTION CONSTRUED.—*Held*, that the general purpose of section 17 of article IV. of the constitution, that "each law shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title," is accomplished when a law has but one general object which is fairly indicated by its title.

IDEM—STATUTE 1881, 59, CONSTRUED—CARE OF INSANE.—The "act to provide for the taking care of the insane of Nevada" provides for the construction of an asylum; that the money appropriated for that purpose shall be taken from the state school fund, and in its place there shall be deposited state bonds, bearing interest, etc., and provides for the levy and collection of a tax to meet the payment of said bond: *Held*, that the act embraces but one subject, the care of the insane, which is fairly expressed in its title.

IDEM—The different steps by which the result is to be accomplished are not different subjects, but minor parts of the same general subject.

BONDED INDEBTEDNESS OF STATE—SECTIONS 2 AND 3 OF ARTICLE IX. OF THE CONSTITUTION CONSTRUED.—In construing these provisions of the constitution: *Held*, that the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, and that the legislature has the power to direct the issuance of bonds at any time, so long as it does not conflict with the limitation as to the amount

IDEM.—AMOUNT OF INDEBTEDNESS.—In construing the various statutes relative to the territorial indebtedness: *Held*, that the act in question does not contemplate an indebtedness in excess of that authorized by the constitution.

IDEM.—SCHOOL FUNDS—SECTION 3, ARTICLE XI., CONSTITUTION.—Under section 3, article XI., of the constitution, the legislature is commanded to invest certain moneys received for educational purposes in United States bonds or the bonds of this state: *Held*, that the issuance of the bonds provided for in the act in question is not an evasion of the investment directed by the constitution.

APPEAL from the District Court of the Second Judicial District, Ormsby County.

The facts appear in the opinion.

C. S. *Varian*, for the Appellant:

I. The title of the act does not embrace the subject of sections 11 and 12. The act embraces more than one subject. Neither the purpose to make a state loan and public debt, nor to invest school moneys, is indicated by the title. It may be that members of the legislature who voted for the bill, as well as the people lured into security by its title, although willing to provide for the insane, would have found good and convincing objection to the contracting of a public debt, or the diversion of school moneys by a misnamed investment for such purpose. The ordinary mode of raising money to conduct and maintain the public business is by taxation. The question of contracting a public debt involves grave considerations of necessity and public policy. The rate of interest and time of payment, together with the taxation required to meet the obligation, all present questions of great interest to the people, and upon which they are entitled to be heard. This is also true of the question of investing school moneys. There is a general law on the statute book giving the management and control of school moneys to a state board of education. (2 Comp. L. 3322.) There is no language in the title of the act which is elastic enough to include the purposes and subjects embraced in sections 11 and 12. The courts can not enlarge the scope of the title. The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. (*Mewherter v. Price*, 11 Ind. 199; *State v. Kinsella*, 14 Minn. 524; *Gaskin v. Meek*, 42 N. Y. 186; *People v. Allen*, Id. 404; *People v. Hills*, 35 Id. 449; *People v. O'Brien*, 38 Id. 193; *Ryerson v. Utley*, 16 Mich. 269; *Cutlip v. Sheriff*, 3 W. Va. 588; *People v. Father M. Society*, 41 Mich. 67; *Shepherd v. Helmers*, 23 Kan. 507; *State v. Silver*, 9 Nev. 227.) Three subjects are embraced in the law: 1. Providing for the insane; 2. Providing for a state loan; 3. Providing for the investment of school funds.

II. The loan authorized is not "for the purpose of enabling the state to transact its business upon a cash basis." (Secs. 2, 3, art. IX., Con.; sec. 1, art. XII., Con.) If building an insane asylum is to be considered as a part of the ordinary business of the state, the expense of doing so should be defrayed in the ordinary way out of the annual revenue. No necessity exists for the creation of a public debt to build an asylum. The power to contract such a debt is limited to the purpose "of enabling the state" to do its business. If it already has the power and is able in another and the usual way to carry out its purpose, the constitutional provision does not apply. Eliminating sections eleven and twelve from the law, and there still remains an appropriation to carry it into effect. As an appropriation in anticipation of revenue, it is within the power of the legislature and can be made effective. (Const. Debates, 754–756, 762 *et seq.*, 879; *Ash v. Parkinson*, 5 Nev. 15; Const., sec. 2, art. IX.; *State v. School Fund*, 4 Kan. 269.)

III. These sections authorize and direct the creation of a public debt in the sum of eighty thousand dollars, and the public debt of the state now exceeds the sum of three hundred thousand dollars. The territorial debt is wiped out by payment. (Stat. 1871, 81; 1873, 94; 1877, 191; 1879, 15; Const., art. XVII., secs. 7, 24.) The constitution does not say

that upon payment of that debt, the state may go on forever, under pretense of revivifying it under different forms and names, and contract debts equal in amount to those paid. What it does say is that the assumption, *i. e.*, the undertaking to pay the old debt, shall not prevent the state from contracting the additional indebtedness. (*People v. Johnson*, 6 Cal. 499; *Nougues v. Douglass*, 7 Id. 65; *Rodman v. Munson*, 13 Barb. 188, 63; *Scott v. Davenport*, 34 Iowa, 208; *State v. School Fund*, 4 Kan. 270.)

IV. These sections direct the diversion and transfer of the moneys pledged to educational purposes to another fund and for other purposes, and are unconstitutional. (Art. XI., sec. 3.) To preserve the fund it is apparent that all investments must be made in securities that some time or other can be made available to repay the money. To invest moneys in bonds means to loan them, so that they will produce returns by way of interest, and upon the expectation of realizing the principal upon the maturing of the bonds. The bonds of a state or of the general government are, within the contemplation of our constitution, always negotiable in open market. When such bonds are once upon the market they are the subject of purchase and sale, *i. e.*, of investment; and it is in this sense only that the moneys belonging to the school fund can be "invested" by the trustees of the fund. It is vain to attempt to fritter away the express provisions of the constitution by contending that the words "investment" and "bonds" have any other meaning than that known to commerce and the business world everywhere. By "state bonds" is meant something of value for purchase, investment, and income; not to the debtor state, but to the creditor capital, which owns it. There is no security in a paper never delivered by a state, and which remains in the vaults of its treasury. The power of the state is limited to an investment in constitutional bonds, already on the market, containing an obligation to pay some one, a sum certain and at a time certain, and secured by a revenue provided by authority. (*State Treasurer v. Horton*, 6 Kan. 354.)

*Lewis & Deal*, for Respondents:

I. The act in question embraces but one subject and matters properly connected therewith, which subject is briefly expressed in the title. (Sec. 17, art. IV., Const., is mandatory; *State v. Silver*, 9 Nev. 231.) In the construction of the provisions of this section in state constitutions the courts have adopted a liberal rule in favor of their validity. (*State v. Ah Sam*, 15 Nev. 27; *Murphy v. Menard*, 11 Tex. 673; Cooley's Const. Lim. 146; *Sun Mutual Ins. Co. v. New York*, 4 Seld. 241; *Brewster v. City of Syracuse*, 19 N. Y. 117; *People v. Mahaney*, 13 Mich. 495.) When the title of an act expresses a general purpose or object, all matters fairly and reasonably connected with it, and all necessary measures which will facilitate its accomplishment, are proper to be incorporated in the act, and are germane to its title. (*People v. Briggs*, 50 N. Y. 562; Sedg. on Stats. 41; *People v. Banks*, 67 N. Y. 572; *People v. Brinkerhoff*, 68 Id. 265; *Kerrigan v. Force*, Id. 384; *Billings v. The Mayor*, Id. 415; *Groversville v. Howell*, 70 Id. 290; *Worthen v. Badgett*, 32 Ark. 496; *Gibson v. State*, 16 Fla. 291; *Gould v. Chicago*, 82 Ill. 472; *Farmers' Ins. Co. v. Highsmith*, 44 Iowa, 330; *Howland Coal Co. v. Brown*, 13 Bush (Ky.), 681; *New Orleans v. Dunbar*, 28 La. Ann. 722; *People v. Bradley*, 36 Mich. 447; *Perkins v. Du Val*, 31 Ark. 236; *Prescott v. City*, 60 Ill. 122; *People v. Wright*, 70 Id. 388; *People v. Brislin*, 80 Id. 423; *Crescent Gas Light Co. v. New Orleans*, 27 La. Ann. 138; *New Orleans v. New Orleans R. R. Co.*, Id. 414; *Ohio v. Covington*, 29 Ohio St. 102; *Shields v. Bennett*, 8 W. Va. 74; *Woodson v. Murdock*, 22 Wall. 351; *Tallahassee Mfg. Co. v. Glenn*, 50 Ala. 489; *State v. Price*, Id. 568; *Burke v. Munroe Co.*, 77 Ill. 610; *Williams v. State*, 48 Ind. 306; *Harris v. People*, 59 N. Y. 599; *Morton v. Comptroller General*, 4 S. C. 430; *Hingle v. State*, 24 Ind. 32.)

II. The act is not special. It embraces all the insane, it is general in all its provisions, and it operates uniformly throughout the state. (*McGrath v. State*, 46 Md. 634; Cooley's Const. Lim. 128, n.; *State v. Commissioners*, 29 Md. 520; *Wheeler v. Philadelphia*, 77 Pa. St. 348.)

III. The erection of buildings for the care of the insane is a part of the business of the state. This duty is enjoined upon the legislature in the most comprehensive terms. (Sec. 1, art. XIII.)

At the time the constitution was adopted there was no insane asylum in the state, and it was the intention of the framers of that instrument, that proper laws should be adopted with provision for the support of the insane. The authority given to provide for the support of the insane carries with it the power to do everything necessary to attain that end.

IV. The tenth and eleventh sections of the act do not authorize the transfers of moneys pledged for educational purposes to another fund for other purposes. (Sec. 3, art. XI. of the Constitution.) The state is prohibited by it from ever using for any purpose any part of the principal of the proceeds from the sources mentioned, but the interest of the principal is permitted to be used for the benefit of the public schools. In order that any benefit can be derived from the moneys in the state school fund, it is necessary that the principal should be invested either in United States bonds or Nevada state bonds. In obedience to this section the legislature has from time to time provided for the investment of the moneys belonging to the state school fund. It is made the duty of the proper state officers to cause the investment of the moneys in the state school fund, whenever there is any to invest, in United States securities, or in bonds of this state. There is no transfer of funds from the state school fund to any other fund authorized by sections 10 and 11 of the act in question within the prohibition of section 3, art. XI., but the authority is given to the state to borrow eighty thousand dollars upon the security of its bonds, as provided in that section. By the deposit of the state bonds in the state school fund, the credit of the state is pledged for the repayment of the money borrowed, and interest thereon. The test of this is whether a debt is created by the transaction in favor of the state school fund. If there is, there is no transfer of moneys from the state school fund to another fund for other uses, but there is a strict compliance with the provisions of section 3, art. XI. of the constitution, and the laws passed to carry that section into effect.

V. The public debt of this state does not exceed three hundred thousand dollars, and it will not exceed it when the whole eighty thousand dollars appropriated by sections 10 and 11 is negotiated. (The various statutes and constitutional provisions bearing upon this subject are discussed at length.)

By the Court, BELKNAP, .:

By an act passed at the last session of the legislature the respondents herein were, with others, created a board of commissioners for the care of the insane of this state. (Stats. 1881, 59.)

They are required by the act in question to cause to be erected upon land belonging to the state, near the town of Reno, an asylum of sufficient capacity for the care of one hundred and sixty patients. The act directs the time within which the building shall be completed, the material of which it shall be constructed, its maximum cost, and the manner in which contracts for its construction shall be made. It appropriates the sum of eighty thousand dollars for constructing and furnishing the asylum, and in the eleventh section provides as follows: "The money herein appropriated shall be taken from the state school fund, and in its place shall be deposited eighty bonds of one thousand dollars each, bearing interest at the rate of four per cent. per annum; said bonds shall run for twenty years, but shall be redeemable by the state at its pleasure, after two years; said bonds shall be signed by the governor and state controller, countersigned by the state treasurer, and authenticated by the great seal of the state, and shall state in substance that the state of Nevada owes to the state school fund eighty thousand dollars, the interest on which sum, at four per cent. per annum, she agrees to pay during the life of said bonds, for the benefit of the common schools of the state; said bonds shall be lithographed, as is usual in similar cases, and deposited with the treasurer of the state. The interest on said bonds shall be paid semi-annually, on the first days of January and July of each year, on the written order of the state board of education to the state controller, directing him to draw his warrant for the amount of such semi-annual interest on the indigent insane interest and sinking fund herein created. All sums derived from the interest of said bonds shall go into the general school fund, for the support of the common schools of the

state, and for the regular and prompt payment of which the faith and credit of the state is hereby pledged."

The twelfth section provides for the levy and collection of a tax, the proceeds of which are appropriated for the payment of the principal and interest of the bonds mentioned in the preceding section. Subsequent sections provide for the care of the insane pending the completion of the building, their management thereafter, and other matters, which are not drawn in question. Appellant claims that so much of the act as is contained in the eleventh and twelfth sections is unconstitutional, and seeks by this action to restrain respondents from issuing the moneys in the state school fund, as they are directed to do by the twelfth section.

The first ground of objection to the validity of the act is that it does not comply with the requirements of section 17 of article IV. of the constitution. This section provides that each law enacted by the legislature shall embrace but one subject and matter properly connected therewith, and that such subject shall be briefly expressed in the title. The title of the act is "an act to provide for the taking care of the insane of the state of Nevada," and it is insisted that the act not only embraces the subject expressed in the title, but two other subjects; that is to say, provision for a state loan and for the investment of moneys of the state school fund.

The restriction upon the legislature contained in section 17 of article 4, was considered by this court in the case of *State v. Silver*, 9 Nev. 231. It was then declared that the design of the constitution in requiring that each enactment should contain but one subject and matter properly connected therewith, was to prevent improper combinations to secure the passage of laws having no necessary or proper relation, and which, as independent measures, could not be carried; and that the object of the other requirement, that the subject of the act should be expressed in the title, was that neither the members of the legislature nor the public should be misled by the title.

"The constitution does not require that the title of an act should be the most exact expression of the subject which could be invented," said the court of appeals of New York in the matter of the petition of Mayer (50 N. Y. 504). "It is enough if it fairly and reasonably announces the subject of the act."

"The general purpose of these provisions is accomplished," says Judge Cooley in his Treatise on Constitutional Limitations, page, 143, "when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of this general object to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible."

It has accordingly been held in Kentucky, under a similar constitutional provision, that an act entitled "An act to amend the charter of the Cincinnati and Covington bridge company," a provision that the bridge company might sell and the city of Covington might subscribe for one hundred thousand dollars of the stock, and sell the bonds of the city and levy a tax to pay them, was valid. The court said: "None of the provisions of a statute should be regarded as unconstitutional where they all relate directly or indirectly to the same subject, have a natural connection, and are not foreign to the subject expressed in the title. \* \* \* The power to sell stock to the city of Covington necessarily requires that a power should be conferred on the latter to subscribe and pay for it; for without such a power the power to sell would be nugatory. The subject is the same, although it relates to a transaction to which two corporations are parties, one of which only is named in the title of the act. If by the act a power had been conferred on the city of Covington to subscribe for the stock of any other corporation but the one named in the title of the act, then the provision would fall within the constitutional prohibition, and be clearly null and void. But as it is restricted in its operation to matters pertaining to the bridge company, and the provisions of the act, so far as they relate to the city of Covington, are apposite to the purpose which was intended to be effected by its passage, and are sufficiently indicated in its title, it is not liable to this constitutional objection. It was certainly not necessary for the legislature to pass two separate acts to effect

the object it had in view—one to enable the company to sell the stock to the city, and another to enable the city to subscribe and pay for it. The constitutional provision must receive a rational construction, and not one that would lead to such an unnecessary and absurd result." (2 Met. (Ky.) 219.)

In *People ex rel. Hayden v. City of Rochester*, 50 N. Y. 525, it was held that, in an act entitled "an act in relation to the erection of public buildings for the use of the city of Rochester," a provision for selecting and procuring a site for the contemplated buildings was valid under a similar constitutional provision, upon the ground that it was a necessary step towards the erection thereof. The court said: "But buildings can no more be erected without sites than without materials or means to defray the expense. All these are details, and no reference thereto in the title is required. The act in all its parts may and will, with the site selected, be fully executed without any violation of the constitution."

So, under a similar clause in the constitution of Illinois, it was held that an act entitled "an act to authorize the town of Ottawa to erect two bridges across the Illinois and Michigan Canal," and containing provisions for raising money to defray the cost of such bridges, did not embrace more than one distinct subject, that the title was properly expressed and the act valid. (*Ottawa v. The People*, 48 Ill. 233. See also *Brewster v. City of Syracuse*, 19 N. Y. 116; *Gordon v. Cornes*, 47 Id. 608; *People ex rel. Rochester v. Briggs*, 50 Id. 555; *People ex rel. Burroughs v. Brinkerhoff*, 68 Id. 259.)

We are unable to find anything in the act under consideration that does not relate to the care of the insane. The general subject of the act includes not only the construction of an asylum but necessarily the means by which the work is to be accomplished, and the proceedings necessary to be adopted for the purpose of defraying the expense to be incurred. Certainly no one interested in the act would fail to comprehend from its title that it contemplated the expenditure of money, for the care of the insane necessarily involves such expenditure.

The legislature is the sole judge of the mode by which this money shall be provided, and was equally authorized to raise it by loan or appropriate it from the general revenues. The act has but one subject, and that is the care of the insane. All of its provisions have this common object in view. The different steps by which the result is to be accomplished are not different subjects, but minor parts of the same general subject, and legislation would be impossible if all of these details were required to be provided for by distinct enactments.

The second objection to the validity of the act arises under sections 2 and 3 of article IX. of the constitution. By section 2 the legislature is required to provide for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year, and in case the expense shall in any year exceed the revenue, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of the ensuing year or two years. Section 3, for the purpose of enabling the state to transact its business upon a cash basis, authorizes a bonded debt which shall never, in the aggregate, exceed the sum of three hundred thousand dollars, except in certain enumerated cases. It is contended that the building of an insane asylum is a part of the ordinary business of the state, and in view of the provisions contained in the sections mentioned, the expense of constructing such building should be taken from the revenues arising from taxation.

The authority to create a bonded debt is subject to no restrictions or conditions whatever save that such debt shall not exceed the sum of three hundred thousand dollars, and the law authorizing it shall provide for its payment within twenty years by taxation. The constitution nowhere declares the necessity which shall exist as prerequisite to the issuance of bonds or the making of a loan under this section, nor the use to which money obtained by such loan shall be applied. From the language employed by the instrument itself, as well as from the debate in the convention upon those portions of the constitution relating to state finances, the object in authorizing a bonded indebtedness was to enable the state to maintain its business upon a cash basis, notwithstanding financial exigencies, without resorting to onerous taxation.



For the first three years subsequent to the adoption of the constitution, the legislature was restricted from levying a tax for state purposes exceeding one per cent. per annum. (Sec. 24, art. XVII.) In the discussion of this restriction in the constitutional convention it was in several instances urged that if this rate of taxation failed to produce the necessary revenue to defray the expenses of the state, relief could be had by the issuance and sale of the bonds of the state to the amount of three hundred thousand dollars, under the provisions of section 3 of article IX. No suggestion was ever made, so far as appears from the debates, of the right of the legislature to seek relief at any time by this means. It has the power to direct the issuance of bonds under this clause at any time so long as it does not conflict with the limitation as to amount.

The next objection is that the act contemplates an indebtedness in excess of that authorized by the constitution. Under section 7 of article XVII. of the constitution, the state was required to assume all debts and liabilities of the territory of Nevada unpaid at the time of the admission of the state into the Union, but it was provided that such assumption should not prevent the state from incurring the three hundred thousand dollars indebtedness as provided in section 3 of article IX. already mentioned. At the session of 1871 the legislature determined the territorial indebtedness to be three hundred and eighty thousand dollars, for which amount a loan, bearing interest at nine and one half per cent. per annum, payable in fifteen years, was by authority of law negotiated. (Stats. 1871, 80.)

Before this loan became due, and for the evident purpose of reducing the rate of interest which the state was paying upon it, the legislature, by acts approved March 8, 1877, and January 28, 1879, respectively, authorized the purchase and retirement of the bonds issued under the act of 1871, and the issuance of a new bond for three hundred and eighty thousand dollars, bearing interest at the rate of five per cent. per annum. In the purchase of the bonds of 1871 the sum of three hundred and twenty-five thousand dollars belonging to the school fund was used, and the new bond was executed to and became the property of the school fund.

These proceedings it is claimed amounted to a payment of the bonds of 1871, and extinguishment of the territorial indebtedness; that the three hundred and eighty thousand dollars in bonds now outstanding, and in the school fund, exceeds the maximum indebtedness allowed by the constitution, and therefore the legislature has no authority to issue the eighty thousand dollars of bonds provided for by this act. But this position is untenable. The proceedings by which the bonds of 1871 were retired, and the three hundred and eighty thousand dollar bond, now in the school fund, issued, did not extinguish the territorial indebtedness. That indebtedness still exists, but it is evidenced by a different obligation; that is to say, by a bond for three hundred and eighty thousand dollars, bearing five per cent. per annum interest, instead of bonds for the same amount, bearing nine and one half per cent. interest per annum.

Finally, objection is made that the eleventh section of the act directs a transfer of moneys of the school fund to another fund and for another purpose. Under section 3 of article IX. of the constitution, the proceeds of the sales of public lands donated to the state by the general government, as well as moneys received from other sources, are solemnly pledged for educational purposes, and required to be placed in the school fund, and not be transferred to any other fund or for other use. This fund the legislature is commanded to invest in "United States bonds or the bonds of this state," and the interest only of the capital of the fund shall be used for educational purposes.

In this behalf it is urged that the issuance of the bonds provided for in this act is an evasion of the investment directed by the constitution; that the constitution contemplates the purchase of bonds existing at the time of the passage of the enactment authorizing the loan. This objection is without force. It is manifest that the bonds provided for by this act are as much the bonds of the state as if they had been outstanding at the time of the passage of the act, and were thereafter to be purchased for the benefit of the school fund. The legislature primarily

directs the investment of the moneys in this fund, and so long as it complies with the directions of the constitution, and makes the loan upon the securities required by that instrument, the loan will be valid. A discretionary power is conferred to invest the fund either in the bonds of the state or of the general government, and any attempt on the part of courts to supervise such discretion would be an invasion of the authority of the legislature.

The act being constitutional, the judgment of the district court refusing to restrain respondents from proceeding, should be affirmed, and it is so ordered.

SENATOR COFFIN:

Since that is in an Assembly bill, I thought we would reserve most of the discussion on that if it passes the Assembly. We do not know if it will come to us in its present form.

SENATOR LEE:

I have a follow-up question on the line of credit. When would this be paid back? Does it start from the moment we start taking some money? Are we going to pay it back once a month, every year? Are we going to let it accumulate every four years, all due and payable? What is your procedure?

SENATOR CARE:

We will discuss this later this afternoon when that bill comes to us from the Assembly. After Mr. Ghiggeri has gone through all the exhibits and we have discussed all the questions, my intent is to open the discussions on Senate Bill No. 1 and Senate Bill No. 2. We will provide time for questions such as yours.

MR. GHIGGERI:

Continuing with additional budget reductions, the Commission on Economic Development has approximately \$1.3 million. This will require reductions to the Rural Development Authority of \$281,000; the Economic Development Authority of Western Nevada, \$300,000; Nevada Development Authority, \$472,000, and a reduction to the Train the Employees Now Program for \$302,000.

Regarding the Commission on Tourism for \$2.8 million, this provides for reductions of vacancy savings, \$100,000; outside postage, \$1,050,000; promotion and advertising, \$2,193,000, rural matching grants, \$400,000; and the China Office, \$75,000. The amounts total more than the \$2.8 million in reductions.

The additional reductions are being made to protect the reductions in room-tax revenues for FY 2009. The Committee should be aware that approval of this will probably result in the transfer of funding for this agency in FY 2010 to the General Fund with room-tax revenues being deposited into the General Fund. They are currently being deposited into this account. That would be an item that would require consideration by the 75th Legislative Session. Basically, this would deplete the reserve funding in that account.

SENATOR RHOADS:

Do you have a breakdown of the \$400,000 for rural Nevada? Could you get that for me?

MR. GHIGGERI:

We can get that information for you.

Next, I will discuss the Museums and History Trust Fund. There would be a reduction of \$300,000. This was initially funded by the Legislature from the General Fund. It was S.B. 579 of the 70th Session. There is a current balance in that account of \$321,000.

The reduction of \$476,000 for the Proficiency Testing Account in the Department of Education would eliminate the norm-reference testing. This is a one-time elimination in the spring of 2009.

The elimination of year two of the Innovation/Remediation Evaluation of the School Remediation Trust Fund is a \$240,000 reduction.

There is a \$300,000 reduction in the funding that was provided for school support funds. The Department of Education advises they had overestimated the number of schools that would require expenditure of these funds.

There is a sweep of approximately \$4 million from the Nevada System of Higher Education Worker's Compensation Reserve. This would be accomplished by reducing the amount of funds that are provided to the University System for the remainder of the fiscal year and requiring them to utilize what they have in that reserve account to fund the Worker's Compensation Assessments for the balance of this fiscal year.

There is a reduction or a reversion of approximately \$851,000 in Tobacco Funds that would be received in April. This will not affect the awards for grantees in FY 2009, but in FY 2010, the grantees will notice a reduction in their grants.

A reduction of \$500,000 will be made for disabilities services. This is a reduction of personal-assistance services for traumatic brain injury/autism-independent living programs. The reductions, we have been advised, will not result in a termination of services for current clients but will result in longer wait times and wait lists being established.

There is an additional savings at the Department of Health and Human Resource's projections from budget reductions that have been previously implemented for \$6.8 million. These were budget reductions resulting from the implementation of the national drug codes and outpatient hospital and physician pharmacies. The State receives rebates on this. These are projected savings.

In August, the Department of Health and Human Services began billing the counties for their share of Medicare Part-D payments for the county match which generates a \$1.5million savings.

An additional \$2.2 million savings will be realized by the Department of Health and Human Resources without further reduction to services that have been previously been approved by the Interim Finance Committee (IFC) in August.

There is the Homemaker Services for the Division of Aging Services \$350,000 projected savings provided by the Department of Health and Human Services. The savings is associated with holding the number of hours provided by family support workers to 20 hours a week and substitutes the services provided with private-contract services and not filling family-support worker positions as they become vacant. There will be no reduction in hours of service for clients because any reductions in service for clients hours provided by the intermittent family-support workers will be made up by contract workers.

The amount of Senior Citizen Property Tax Assistance Account will be reduced by \$450,000.

There is an additional \$900,000 in savings in the Senior Rx Program. The Department of Health and Human Resources advises that based on current spending patterns this can be reverted.

In the Temporary Assistance for Needy Families Funds (TAAF), there is \$3.95 million that will be transferred to various other budgets within the Department of Health and Human Services to reserve the reversion of appropriated General Fund dollars to provide those services.

There is \$208,000 remaining in one-shot funding for the equipment for the Department of Health and Human Services' Welfare Division, specifically Welfare Administration and Welfare Field Services.

There is a reversion of an additional \$250,000 from the Child Support Enforcement Account. Previous budget reductions have provided for a \$500,000 reduction from this account. This will result in a total of \$750,000.

There is \$11.4 million in additional savings for medication funding that was provided to the Division of Mental Health Services specifically for southern and northern Nevada Adult Mental Health Services. The Department of Health and Human Services indicates that these reductions can be made without any impairment of services provided to clients.

There is a \$118,000 reduction in the Immunization Program. This will not result in any reduction to vaccinations provided to clients, but this is an administrative cost that was provided for the implementation of the registry.

SENATOR COFFIN:

I would like to ask a question about the medication. This is an eye opener. This addresses the reduction of medication in the Division of Mental Health and Developmental Services. This was for \$11.4 million.

I have to believe something is wrong here. Either these agencies have been over-stating the amount of money they needed and, now, are finding they can reduce, with no harm, or there is

possible harm to people and they are just being good agency people and offering this medication cost-up. I need to know what we heard from the agency. I would like to hear testimony as to whether they can do this without reducing medication, denying medication or providing, sometimes, cheap and not necessarily efficacious generic drugs in place of the drugs they are now getting.

SENATOR CARE:

I believe we will be able to do that during the discussion of the bill. Your comments are well noted.

I would like to point out for the members of the Committee that we are going through everything that Leadership and the Governor's staff and our own staff has been looking at during the past several weeks.

Senate Bill No. 1 deals with the temporary suspension of sharing mineral land-lease revenues, which we will discuss later this morning. We will hear about Senate Bill No. 2 during the afternoon meeting. I wanted everyone to have the benefit of the considerations that were made.

MR. GHIGGERI:

There are additional vacancy savings of \$772,000 from the Nevada Youth Training Center and Caliente Youth Center. The Department of Health and Human Services advises us that those cottages are currently closed. I received information, yesterday, that at the Nevada Youth Training Center, out of 160 beds were authorized, 100 beds are filled. At Caliente, out of 100 beds authorized, 111 are filled. There is a 23-percent vacancy rate of current staff positions at the Youth Training Center in Elko. There are 106 positions filled out of 137 authorized. At Caliente, there is a 20-percent vacancy rate. There are 80 positions filled out of 100 authorized.

There is an additional vacancy savings of \$112,000 at the Division of Child and Family Services-UNITY/SACWIS Program.

There is an additional savings from the Project ChalleNge initiative that was recommended by the Governor in the 74th Session. The Committee should note that \$600,000 in savings was taken from this project by the 24th Special Session.

There is approximately \$188,000 in savings by eliminating the contract services to operate the Department of Corrections DUI treatment program. The Department advised only 12 to 15 inmates are enrolled in the program. Changes in statutes approved by the 74th Session no longer include the completion of the treatment program as a standard for determining eligibility of the offender to be assigned to residential confinement.

There are the residual funds left in the Public Safety one-shot account of \$260,000.

From the \$160 million provided to the Department of Transportation from the General Fund for highway projects, \$30 million will be taken away. Previously, the Legislature has taken \$106 million back from the \$160 million appropriation. This will result in a total of \$136 million being taken back.

There is \$90,000 in deferred maintenance from the Department of Agriculture.

There is a savings of \$135,000 from the partial funding of seven positions in the Insurance Regulation Account. Those positions currently work on other functions within the Insurance Division. There would be funds transferred from other accounts to support those positions in the Insurance Regulation Account.

There is a \$100,000 savings from the Athletic Commission. The agency has not yet implemented programs approved by the 74th Session for the MRI/CAT scan program.

There is a vacancy savings of \$48,699 from the Division of State Lands for a Land Agent II.

There is alternative funding for the Administrator for the Division of State Lands which results in savings of about \$27,900.

There is a savings of \$514,000 from the Bureau of Vocational Rehabilitation and an additional \$128,000 savings from the Department of Employment Training and Rehabilitation. The Department has recently learned that the funds used to operate the Blind Business Enterprise Program Fund can be utilized as matching funds for federal dollars. This would use those operating funds to match the federal dollars and revert the General Fund dollars that were appropriated.

These additional budget reductions total approximately \$72.8 million

Other options considered as part of the solutions to the budget shortfall provide for the reduction in the collection allowance for the various retailers who collect either sales tax, sell cigarette stamps and collect liquor tax or tobacco tax. This will be a reduction from 0.5 percent to 0.25 percent. These would be implemented January 1 and would sunset June 30, 2009. The Department of Taxation has advised us about implementation costs. There is no funding provided to fund those implementation costs at this time. Should this be approved, either the funding for the implementation costs would need to be approved as a supplemental appropriation by the Legislature in 75th Session, or prior to the start of the 75th Session, there would be an allocation from the Interim Finance Committee. The additional revenue reflected is based upon the most recent Economic Forum revenue estimates provided on December 1, 2008.

The allocation of 1 percent of the current Short-Term Car Rental recovery surcharge to the General Fund would generate approximately \$1.8 million.

An acceleration and advance payment of the net proceeds of Minerals Tax would generate approximately \$28 million. The \$28 million was the amount, projected by the Economic Forum, that would be received in FY 2010. Because this is an acceleration, that revenue is now estimated to be received in FY 2009. The General Fund would receive its original FY 2009 payment and another payment of \$28 million in FY 2009 for FY 2010.

SENATOR CARE:

This is the economic picture, and these are the numbers and considerations that Leadership and the Governor's Office and others worked on over the past several weeks.

Let us open the hearing on Senate Bill No. 1. Brenda Erdoes, Legislative Counsel, will discuss the bill.

BRENDA J. ERDOES (Legislative Counsel):

This bill is simple once you understand that all of the provisions of the bill expire by limitation at the end of this fiscal year, June 30, 2009. The current method for disbursing the money the State receives from federal land-lease payments is that currently, the first \$7 million goes into the DSA, and then it goes into a separate account. It is then distributed to the counties. For this brief period, from passage and approval, until the end of this fiscal year, this structure is changed and all the money goes into the DSA with the caveat that this money must be used in the manner consistent with applicable federal law. This change is being made for only the next six months. After that, it goes back to the original distribution. The reasons the sections are repealed in this bill in the account is because they are not needed during this period where the distribution is changed, but that only occurs from passage and approval of this bill until the end of this fiscal year on June 30, 2009.

SENATOR RAGGIO

I understand the requirements of the basic act, which is cited as the Mineral Leasing Act of 1920. The money received pursuant to this Act must be used by the State and its subdivisions as the Legislature may direct giving priority to those subdivisions of the State socially or economically impacted by the development of minerals leased. According to your digest, it specifically cites that it is for planning, construction and maintenance of public facilities and provision of public service. Senate Bill No. 1 would direct these moneys to be utilized by the Nevada State General Fund in accordance with what has been indicated here is a plan to deal with the shortfall. Will the direction of these moneys for that purpose meet the requirements that are set forth in the Mineral Leasing Act of 1920?

MRS. ERDOES:

We believe that they will because the money is being put in the DSA. The DSA is distributed to the county school districts which are public facilities. Bringing people to work on these leases brings children into the schools districts which creates an impact on the districts, therefore, meeting that requirement.

SENATOR RAGGIO:

Then the bill provides for the sunset in section 4. This would be applicable only during FY 2009.

MRS. ERDOES:

That is correct. It is for only about six months.

SENATOR COFFIN:

This is a little off the point of the bill, but the question relates. There is a question of royalties on mining that comes up every now and then. We do not collect royalties in the State of Nevada, per se, do we?

MRS. ERDOES:

The net proceeds of mines taxed do apply to the royalties on net proceeds. That is how we collect the tax on it.

SENATOR COFFIN:

Does that really mean royalties? I am curious if there is a definition of royalties under the Mineral Leasing Act of 1920 and if these taxes that come under the fund are considered royalties under that Act.

MRS. ERDOES:

The Act does not speak to them as royalties because these are payments made by the people who actually drill for and have the leases on the land. They are the people who are the drillers, and it is the payment they make to the federal government. I believe the term royalty is generally used to describe the payments made by a mining company who is making the lease payments to the federal government. The royalties will be from the mining company to the owner of the property. It is similar because in this case the federal government is the owner of the property. I can see how you draw that conclusion.

SENATOR COFFIN:

Due to the high mineral prices being received on some of the minerals that come from the ground in Nevada, we get a lot of pressure from people to increase those taxes on mining. What are the constitutional and statutory restrictions at the present time?

MRS. ERDOES:

The restrictions are the ones in the Constitution are very specific. In the 1980s, the Legislature and the people voted for and passed a change to Article 10, Section 5 that specifically says the net proceeds of minerals will be taxed at \$5. That is the highest rate and what it is taxed at currently. It further provides that the Legislature shall not further tax those proceeds until they lose their status as proceeds. The Legislature is currently taxing at the maximum amount allowed under the Constitution. That money is appropriated by the Constitution back to the counties. There is no other tax that is allowed to be placed under that Constitutional provision. To tax them further would take a constitutional amendment.

SENATOR COFFIN:

In conclusion, you would agree there is no conflict between the provisions in the Constitution requiring all of these things to go to the locality vs. taking it to the State in this particular case.

MRS. ERDOES:

These are not covered under the same provision of the Constitution, and therefore, I believe it is constitutional.

SENATOR MCGINNESS:

I represent all or part of seven counties. Churchill County is blessed with a lot of geothermal resources. Geothermal is taxed like gold mines based on net proceeds. Geothermal in Churchill County has been getting economic-development-tax abatements. Now, we are going to cut the proceeds that Churchill County gets, but on the other hand, we are going to give them a rebate. The County is being hit twice. I want to emphasize to the Committee that the counties are getting hit on the front and the back end in Senate Bill No. 1. We should consider, at a later time, that the rural counties should be given some kind of break on this issue.

SENATOR RHOADS:

If this bill passes, as written, who gets hurt and who benefits from it?

MR. GHIGGERI:

In FY 2006, a total of \$1.8 million was distributed to the counties. In FY 2007, there was no distribution to the counties. In FY 2008, a total of approximately \$5.1 million was distributed to the counties. In FY 2008, Churchill County received approximately \$1 million; Elko County received approximately \$385,000; Eureka County approximately \$407,000; Lander County, approximately \$742,000; Mineral County, approximately \$283,000; Nye County, approximately \$1.4 million; Pershing County, \$166,000; and White Pine County, approximately \$353,000. Those counties received the bulk of the money.

SENATOR RHOADS:

So if this bill passes, those counties would not get any money.

MR. GHIGGERI:

If the \$7 million threshold is exceeded this fiscal year, which I anticipate it will be as we have done a projection, though dated and approximate, it would lessen the amount each county would receive by: Churchill County, \$454,000; Elko County, \$232,000; Eureka County, \$248,000; Nye County, \$1.4 million; and White Pine County, \$270,000.

SENATOR RHOADS:

That is strictly a projection and a best guess made in mid-November that could change.

BJORN SELINDER (Churchill County):

I would like to comment on the Minerals Leasing Act of 1920 and the potential losses. I spoke with the Churchill County Comptroller this morning, and he advised me that recently there was a new geothermal leasing that was let by the federal government, and it generated about \$28 million. The way it works is that half of that amount goes to the federal government; the other half goes to the State. Under the program, as it is currently set up, there would be another \$14 million available above the \$7 million that is currently being generated, about half of the leases let, recently, were in Churchill County. That means Churchill County would be impacted between \$6 million and \$7 million. This is a significant sum of money. I appreciate the fact there is a sunset provision in the law, but I do not think the fiscal problems currently ongoing are simply going to go away beginning in FY 2009 and FY 2010 and beyond. There is nothing in the bill to prevent the further extension of that program. It would impact a county that would see a significant revenue increase. They would see a significant increase in the amount of police, fire, roads and schools. Of that \$6 million, that Churchill County stands to receive under the recent lease activity, 25 percent of the amount coming to local government goes to the local school district. The other 75 percent is retained by the County.

SENATOR CARE:

I will close the hearing on Senate Bill No. 1 and start the hearing on Senate Bill No. 2.

MRS. ERDOES:

Thank you. This bill relates to taxation. It has basic topics contained in it. Sections 1 through 5 relate to the acceleration of net proceeds. Sections 6 through 11 relate to the temporary reduction of the retailers' collection allowances. Section 12 is the temporary change in the distribution of the short-term car-rental fees. Because this does result in the increase in revenue taxes, it is not just a switch between local and state governments. This does require a two-thirds vote to pass.

Sections 1 through 5 accelerates the net proceeds tax. It requires that the spring 2009 payment is for the actual fiscal year which is calendar year 2008. At the same time the State receives that payment, it will also receive an estimated payment for the current year we are in. That is how the bill nets dollars. You are actually getting the net proceeds of taxes paid twice at the same time. In the future, in the next year, you will still get estimated payments from then on. This also provides for a "true-up" situation. These estimates are already required of these mining

companies. They do it for the purpose of helping local governments plan for the dollars they will get. They have been doing these estimates for a long time.

Sections 6-11 temporarily reduces the retailers' collection allowances for the sales tax, liquor tax, cigarette taxes and tobacco taxes. This basically cuts them in half from 0.5 percent to 0.25 percent. This is a temporary provision as well. This expires by limitation at the end of this fiscal year. There will be two quarters in which these reductions are cut. Then, it reverts so the retailer keeps the 0.5 percent again.

SENATOR MATHEWS:

I would like to disclose that I am a retailer in the Nevada. This will affect me but will not affect me any more than it would any other retailer.

SENATOR CEGAVSKE:

I would like to disclose that my husband is the general manager for Crawford Coin, a company that has units that sell gas and other products at retail. Those units collect taxes on the sale of liquor, cigarettes and other tobacco products. Sections 6 through 11 of Senate Bill No. 2 reduces the amount that retailers can retain as a collection allowance from the taxes collected on liquor, cigarettes and other tobacco products for a period of six months. Because of benefit or detriment occurring to my husband's employer as a result of the passage of this bill, it is not greater than that occurring to any other retailer; the presumption of independence of judgment technically applies. However, I will abstain from voting on this bill because I believe that my private commitment to my husband affects my decision on this bill and because of the fiscal impact of the bill on my husband's employer.

SENATOR HARDY:

I reviewed this carefully, and I am trying to follow the advice of Counsel. I have some associate members that this would apply to. It does not impact them any greater than it would anyone else. With what we are going through, currently, I am not confident enough to know if that matters. Until we have firm understanding, either through the actions of the court or through the actions of the Legislature, I will have to abstain on these questions out of an abundance of caution. I know we are not supposed to abstain out of an abundance of caution, but I am not clear yet what the rules are. I know this is opening a can of worms. I am doing everything I can, personally, as you know to get a resolution to this question. But, until there is a resolution to this question, I am going to abstain if there is a question, out of an abundance of caution. I do not believe this impacts my members. It is clear on the face of it that it does not impact my members any more than it does every other retailer in Nevada. Very few of my members are retailers. I will abstain on this. I would not normally do this under normal circumstances, but until the question is clearly resolved, I will abstain out of an abundance of caution.

MRS. ERDOES:

Section 12 is the short-term car-rental recovery fee. There is a 4-percent surcharge with 1 percent of that surcharge going to the State's Highway Fund, and we will take another 1 percent to be deposited in the General Fund. This sunsets on June 30, 2009, as do the other taxes.

SENATOR CARE:

There is a two-thirds vote requirement on this bill. In the last Session, I introduced the revised Uniform Unclaimed Property Act. I discovered it required a two-thirds vote when it had nothing to do with taxes. If someone leaves \$500,000 in a bank and never comes back, that goes to the State because it is unclaimed property. I was told the reason for the two-thirds vote requirement was because that would mean more revenue for the State though not in taxes. With that in mind, could you answer whether this bill is the imposition or the creation of taxes?

MRS. ERDOES:

The best way to answer that question is that no new taxes are imposed in this bill. What is happening in each of these cases is that something that is already being done is being changed. There is an additional amount being collected in each case. It is not a new tax. It is a tax everyone has been paying. For the short-term lessors, they are going to send more to the State



for this period. The same is true on the estimated payment under net proceeds. They will actually pay twice this spring. It will be estimated after that. It is not a new tax. They have been paying it, but because of the changes to these distribution provisions and the way they are collected, it will result in additional revenue to the State from an outside source not another governmental entity. That is why it has a two-thirds vote requirement on.

SENATOR NOLAN:

Thank you. Is this the first time this plan has been publicly introduced? There may have been some components discussed with members of the public. As far as we know, this is the first time this plan has been formally presented to the public.

MRS. ERDOES:

I am not certain how to answer that question.

SENATOR CARE:

This is the first time for a publicly convened body to hear this. I have read comments in the newspaper. I was involved in some but not all of the discussions that took place. I do not know how to answer the question. We were all very busy going through the numbers and looking at the possibilities.

In the case of the Net Proceeds Minerals Tax, there is a little bit of history to this. This is not the first time the Legislature has considered anything like this. Is that correct?

MRS. ERDOES:

That is correct. There is a similar bill that helped to construct this bill that was passed in 1987 where we went to estimated and then later came back to actual. That made us better able to draft these provisions because they had been tested by the Department of Taxation. They knew how to make them work.

SENATOR NOLAN:

It is not my intention to put anyone on the spot. My question was that we do not know what some of the unintended consequences of what we are about to do or can potentially do are, including what the affects are on some of the retailers. In these tough economic times, there are some large retail firms who are subject to some of these provisions. Some of the retailers are in different stages of bankruptcy, including Chapter 11 and reorganization. The premise for my first question is, are those entities seeing this for the first time? Are they going to be here to discuss what the true impact is? Ultimately, if what we do throws a number of businesses and employers over the edge and into bankruptcy, then if all we end up doing is to create a bigger hole with a greater number of unemployed relying on the State for programs, we have done nothing to resolve the problem.

I am hoping we will have some representation from the private sector allowing them the time to review this so they may tell this body what the net affect is of what we are doing.

SENATOR CARE:

It is my intent after we have had the last questions from the members of this Committee to allow anyone else in this room to come forth to offer testimony confining it to the subject matter of the bill. As to the unintended consequences, we will be back here in less than two months. We are addressing an economic situation that came upon us much more quickly than I thought would ever be possible.

SENATOR COFFIN:

On the subject of reducing the withholding allowed to the retailer for collection, this is not the first time in this decade we have talked about this. We did reduce it once before. Were we subject to the two-thirds vote rule at that time?

RUSSELL GUINDON (Senior Deputy Fiscal Analyst):

Senator Coffin, you are correct. The taxpayer collection allowances on sales tax, cigarettes, liquor and other tobacco were lowered in A.B. 4 of the 20th Special Session. This was the 2003 tax structure.

SENATOR COFFIN:  
That is half of it.

MRS. ERDOES:  
There was a two-thirds vote requirement.

SENATOR CARE:  
Any other questions? Let us start with sections 1 through 5 of Senate Bill No. 2.

CAROLE VILARDO (President, Nevada Taxpayers Association):  
The only comments I have, other than I understand you are doing some things you have to, is that we do not have a sunset on net proceeds of minerals.

In 1995, when we switched from this type of payment referenced by Mrs. Erdoes, it was switched because of major problems to the local governments and school districts making the advance payments in effect when the commodities on the minerals went down. When they are paid in advance, there is a 10-percent penalty for underestimating what is paid. There had to be refunds issued. Those refunds presented a severe challenge to the counties and school districts. There is no refund provision in this bill. I ask there to be a sunset put on this because I believe you cannot go back from the advanced payments by the end of the year, but you probably could within a year or two. I would like to see this continuously reevaluated. I see you are creating the same problem which forced the change in 1995.

I apologize, but just like everyone else, I just got this a little while ago. I was going to go back to my office to match up all the statute numbers referenced, here when the testimony began. I believe what I have read so far is correct. It is a major concern. I would urge you to put a sunset date on this bill. Let us review this and, if possible, get it back to what it is right now. There are potential problems, and as Mrs. Erdoes said, it was easier to draft this time because we had already gone through it before. We have the drafting to go back to the actual bill, A.B. 272 of the 68th Session. I understand why you are doing it, but it certainly caused problems in the past.

SENATOR RAGGIO:  
During the discussions that lead up to this potential plan, I suggested the sunset provisions for the remaining portions dealt with in this bill. Mrs. Vilardo's comments are germane, but as a practical matter, because this is a prepayment, if you are going to consider a sunset on that part of the bill, there would have to be a sunset that would be, the earliest, at the end of the next biennium not at the end of FY 2009. Otherwise, you would be defeating the purpose of prepayment at this time and creating a major problem.

SENATOR CARE:  
Anyone else wishing to testify on sections 1 through 5 of the bill? Then, let us discuss sections 6 through 11.

BOB OSTROVSKY (Hertz Corporation):  
We need to remind ourselves as to what we are doing to the rental-car industry. There is a 6-percent tax collected from the customers; all of which finds its way to the State. There is a 4-percent recovery fee which when created was meant to reimburse the rental-car companies for the cost of registration and privilege taxes that were paid to be passed back on to the customer. It depends on what state they operate in. In Oregon, it is \$30, and the same car in Nevada is \$500 or \$600. It was an attempt to allow the companies to recover that cost. Last session, we took 25 percent of that and put it into the State General Fund. You are asking for another 25 percent. These are general revenues of a private corporation which are now being transferred to become public revenues in the State's General Fund. It requires a two-thirds vote. It is a tax increase if a private entity is giving money to the State that was previously in their books. That looks and smells like a tax to me. We are prepared to make some offers as a way to overcome this problem so that we can help the State because we understand its situation. But, the situation for us is that \$1.7 million over the next six months leaves the industry. We have some ideas to help you solve your problem and to help us solve ours.

LESLIE PITMAN (Rental Car Group):

We would like to see if there is a way in which we could help address the State's cash-flow challenges now while also insuring that we are in a position where we can preserve keeping our doors open for some of our smaller operators. If you look at Nevada's rental-car industry now, it is no different than what is happening on the national level with the automotive industry. They are closely tied in form and function. To paint a brief picture of what the impacts have been recently: Advantage has closed down operations in Nevada; Avis is asking for bailout money, and last month alone, Enterprise Rent-a-Car lost \$500,000. You are seeing significant layoffs in this industry, and many of these smaller operators that are Nevada-based are teetering on the brink. Our proposed solution is to allow Nevada's car-rental industry the opportunity that you provided to the mining industry, to prepay the \$1.8 million that would be secured through the State taking away the 1 percent in the recovery surcharge. That gives the industry some certainty going forward, but also allows us the opportunity, during the regular session, that if these challenges still exist, we can sit down and try to fashion a solution in a more deliberate manner.

SENATOR CARE:

Anyone else wishing to testify?

Seeing none, Senator Raggio has an amendment to offer to Senate Bill No. 2.

SENATOR RAGGIO:

Based on the testimony we heard this morning on Senate Bill No. 2, I suggest we consider an amendment that would provide a sunset on sections 1-5 dealing with the prepayment of the net proceeds tax. The provisions of those sections would sunset following FY 2011. It would continue through this fiscal year and through FY 2010 and FY 2011. It would then be discussed during the budget deliberations in the next biennium.

Senator Raggio moved to amend Senate Bill No. 2.

Senator Horsford seconded the motion.

SENATOR CARLTON:

Are we discussing just sections 1 through 5, or is that a motion to amend the whole bill?

SENATOR RAGGIO:

I made a motion to amend the whole bill. If it is adopted, then the motion should be to do pass as amended.

SENATOR CARE:

It would affect sections 1 through 5. We will take the vote on the amendment.

**Motion carried unanimously.**

SENATOR HARDY:

I would like to ask Legal Counsel if it is all right for me to vote on the amendment or should there be an abstention? I do not think it relates to the part I have concerns with.

MRS. ERDOES:

Senator Hardy, you can do this either way. It is not the part you voted on.

SENATOR HARDY:

I would like to be shown as voting affirmative on the amendment.

Senator Raggio moved to amend and do pass Senate Bill No. 2 as amended.

Senator Horsford seconded the motion.

Senators Cegavske and Hardy abstained from the vote.

**Motion carried.**

Senator Horsford moved to do pass Senate Bill No. 1  
Senator Townsend seconded.  
Motion carried unanimously.

On the motion of Senator Wiener and second by Senator Nolan, the  
Committee did rise, return and report back to the Senate.  
Motion carried unanimously.

#### SENATE IN SESSION

At 2:47 p.m.  
President Krolicki presiding.  
Quorum present.

#### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee of the Whole, to which was referred Senate Bill No. 1, has had the same  
under consideration, and begs leave to report the same back with the recommendation: Do pass.  
TERRY CARE, *Chair*

*Mr. President:*

Your Committee of the Whole, to which was referred Senate Bill No. 2, has had the same  
under consideration, and begs leave to report the same back with the recommendation: Amend,  
and do pass as amended.  
TERRY CARE, *Chair*

#### MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, December 8, 2008

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed  
Assembly Bills Nos. 1, 2.

DIANE M. KEETCH  
*Assistant Chief Clerk of the Assembly*

#### INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 1.  
Senator Care moved that the bill be referred to the Committee of the  
Whole.  
Motion carried.

Assembly Bill No. 2.  
Senator Care moved that the bill be referred to the Committee of the  
Whole.  
Motion carried.

#### GENERAL FILE AND THIRD READING

Senate Bill No. 1.  
Bill read third time.  
Roll call on Senate Bill No. 1:  
YEAS—21.  
NAYS—None.

Senate Bill No. 1 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 2.

Bill read third time.

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

Amendment No. 1.

"SUMMARY—Makes various changes to the provisions governing the administration of certain taxes and fees. (BDR 32-9)"

"AN ACT relating to state financial administration; temporarily accelerating the collection of the tax upon the net proceeds of minerals; temporarily requiring persons who extract minerals to pay the tax on the net proceeds of the estimated royalties that will be paid for that year; temporarily reducing various allowances for the collection of sales and use taxes and taxes on intoxicating liquor, cigarettes and other tobacco products; temporarily requiring the distribution to the State of an additional portion of the recovery surcharge fee collected from short-term lessees of passenger cars; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides for the taxation of the net proceeds of minerals based upon the actual net proceeds from the preceding calendar year. (NRS 362.100-362.240) Existing law requires the person extracting any mineral in this State to file a statement which shows the estimated gross yield and estimated net proceeds from each operation for the current calendar year and an estimate of all royalties that will be paid during the current calendar year. (NRS 362.115) Sections 1-5 of this bill require advance payment of the tax based upon the estimated net proceeds and royalties for the current calendar year. Section 16 of this bill provides that the collection of the tax on net proceeds of minerals reverts back to the former method of collection on actual net proceeds beginning on July 1, 2011.

Sections 6-11 of this bill reduce the collection allowances applicable to taxes on intoxicating liquor, cigarettes and other products made from tobacco, and sales and use taxes, from 0.5 percent to 0.25 percent of the taxes otherwise due. Section 16 of this bill limits these reductions to the period beginning on January 1, 2009, and ending on June 30, 2009.

Existing law requires a short-term lessor of a passenger car to collect a recovery surcharge fee of 4 percent from the short-term lessee, and requires the deposit of one-quarter of that fee into the State Highway Fund. (NRS 482.313) Section 12 of this bill requires the deposit of an additional one-quarter of that fee into the State General Fund. Section 15 of this bill limits the applicability of this additional deposit to fees collected during the period beginning on January 1, 2009, and ending on June 30, 2009.

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

Section 1. NRS 362.110 is hereby amended to read as follows:

362.110 1. Every person extracting any mineral in this State :  
~~[or receiving any royalty:]~~

(a) Shall, on or before February 16 of each year, file with the Department a statement showing the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted by that person during the calendar year immediately preceding the year in which the statement is filed.

(b) May have up to 30 days after filing the statement required by paragraph (a) to file an amended statement.

2. The statement must:

(a) Show the claimed deductions from the gross yield in the detail set forth in NRS 362.120. The deductions are limited to the costs incurred during the calendar year immediately preceding the year in which the statement is filed.

(b) Be in the form prescribed by the Department.

(c) Be verified by the manager, superintendent, secretary or treasurer of the corporation, or by the owner of the operation, or, if the owner is a natural person, by someone authorized in his behalf.

~~[3.—Each recipient of a royalty as described in subsection 1 shall annually file with the Department a list showing each of the lessees responsible for taxes due in connection with the operation or operations included in the statement filed pursuant to subsections 1 and 2.]~~

Sec. 2. NRS 362.115 is hereby amended to read as follows:

362.115 1. In addition to the statement required by subsection 1 of NRS 362.110, each person extracting any mineral in this State ~~[shall]~~ :

(a) *Shall*, on or before March 1 of each year, file with the Department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year and an estimate of all royalties that will be paid during the current calendar year ~~[.]~~ *and shall pay the tax upon the net proceeds and upon the royalties so estimated. The estimated payment may be reduced by the amount of any credit to which the taxpayer is entitled pursuant to NRS 362.130. The amount of the tax paid upon royalties must be deducted from the payment of the royalties.*

(b) *May file with the Department a quarterly report stating an estimate for the year and the actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31, and pay any additional amount due. The additional estimated tax liability must be calculated by determining the difference between the revised estimates of net proceeds based on the recent production figures as indicated by the quarterly reports and the original estimate supplied pursuant to paragraph (a). If the person chooses to submit such reports, the reports must be submitted on a form prescribed by the Department not later than the last day of the month following the end of the calendar quarter and payment must be made within*

30 days after filing any quarterly report that indicates an additional estimated tax liability.

2. The Department shall:

(a) Use the statement filed pursuant to subsection 1 ~~[only]~~ to prepare estimates for use by local governments in the preparation of their budgets; and

(b) Submit those estimates to the *affected* local governments on or before March 15 of each year.

Sec. 3. NRS 362.130 is hereby amended to read as follows:

362.130 1. When the Department determines from the annual statement filed pursuant to NRS 362.110 the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds, *the amount of the estimated tax paid in the prior calendar year pursuant to paragraph (a) of subsection 1 of NRS 362.115 and any additional payments made pursuant to paragraph (b) of subsection 1 of that section*, and the balance of the tax due, *if any*, and shall send a copy to the owner ~~[of the mine,] or operator of the mine. [or recipient of the royalty, as the case may be.]~~

2. The certificate must be prepared and mailed not later than:

(a) April 20 immediately following the month of February during which the statement was filed; or

(b) April 30 immediately thereafter if an amended statement is filed in a timely manner.

3. The tax due as indicated in the certificate prepared pursuant to this section *and any penalty* must be paid on or before May 10 of the year in which the certificate is received.

4. *If the amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115 in the prior calendar year is less than 90 percent of the amount certified pursuant to this section, the amount due must include a penalty of 10 percent of the amount by which the tax was underpaid unless:*

*(a) The amount paid pursuant to paragraph (a) of subsection 1 of NRS 362.115 in the prior calendar year is equal to or greater than the total liability of the operation for the preceding calendar year; or*

*(b) The person files quarterly reports pursuant to paragraph (b) of subsection 1 of NRS 362.115 in a timely manner for that year and the total of all payments exceeds 90 percent of the amount certified.*

5. If an overpayment was made, the overpayment may be credited toward the payment due on ~~[May 10]~~ *March 1* of the next calendar year. If the certificate prepared pursuant to this section shows a net loss for the year covered by the certificate or an amount of tax due for that year which is less than an overpayment made for the preceding year, the amount or remaining amount of the overpayment must be refunded to the taxpayer within 30 days after the certification was sent to the taxpayer.

Sec. 4. NRS 362.170 is hereby amended to read as follows:

362.170 1. There is hereby appropriated to each county the total of the amounts obtained by multiplying, for each extractive operation situated

within the county, the net proceeds of that operation and any royalties paid by that operation, *as estimated and paid pursuant to NRS 362.115, plus any amounts paid pursuant to NRS 362.130* by the combined rate of tax ad valorem ~~[-]~~ *for the fiscal year to which the payments apply*, excluding any rate levied by the State of Nevada, for property at that site, plus a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to the county. The Department shall report to the State Controller on or before May 25 of each year the amount appropriated to each county, as calculated for each operation from the final statement made in February of that year for the preceding calendar year ~~[-]~~ *and the estimate provided pursuant to NRS 362.115 for the current calendar year*. The State Controller shall distribute all money due to a county on or before May 30 of each year. *The Department shall report to the State Controller any additional payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 within 15 days after receipt of the payment, and the State Controller shall distribute the money to the appropriate county within 5 days after receipt of the report from the Department. For the purposes of this subsection, payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 apply to the fiscal year in which the statement of the estimated net proceeds is filed pursuant to paragraph (a) of subsection 1 of NRS 362.115.*

2. The county treasurer shall apportion to each local government or other local entity an amount calculated by:

(a) Determining the total of the amounts obtained by multiplying, for each extractive operation situated within its jurisdiction, the net proceeds of that operation and any royalty payments paid by that operation, by the rate levied on behalf of that local government or other local entity;

(b) Adding to the amount determined pursuant to paragraph (a) a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to that local government or local entity; and

(c) Subtracting from the amount determined pursuant to paragraph (b) a commission of 5 percent of that amount, of which 3 percent must be deposited in the county general fund and 2 percent must be accounted for separately in the account for the acquisition and improvement of technology in the office of the county assessor created pursuant to NRS 250.085.

3. The amounts apportioned pursuant to subsection 2, including, without limitation, the amount retained by the county and excluding the percentage commission, must be applied to the uses for which each levy was authorized in the same proportion as the rate of each levy bears to the total rate.

4. The Department shall report to the State Controller on or before May 25 of each year the amount received as tax upon the net proceeds of geothermal resources which equals the product of those net proceeds multiplied by the rate of tax levied ad valorem by the State of Nevada.

Sec. 5. NRS 362.170 is hereby amended to read as follows:



362.170 1. There is hereby appropriated to each county the total of the amounts obtained by multiplying, for each extractive operation situated within the county, the net proceeds of that operation and any royalties paid by that operation, *as estimated and paid pursuant to NRS 362.115, plus any amounts paid pursuant to NRS 362.130* by the combined rate of tax ad valorem ~~[ ]~~ *for the fiscal year to which the payments apply*, excluding any rate levied by the State of Nevada, for property at that site, plus a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to the county. The Department shall report to the State Controller on or before May 25 of each year the amount appropriated to each county, as calculated for each operation from the ~~final statement made in February of that year~~ *estimate provided pursuant to NRS 362.115 for the current calendar year and any adjustments made pursuant to NRS 362.130 for the preceding calendar year*. The State Controller shall distribute all money due to a county on or before May 30 of each year. *The Department shall report to the State Controller any additional payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 within 15 days after receipt of the payment, and the State Controller shall distribute the money to the appropriate county within 5 days after receipt of the report from the Department. For the purposes of this subsection, payments made pursuant to paragraph (b) of subsection 1 of NRS 362.115 apply to the fiscal year in which the statement of the estimated net proceeds is filed pursuant to paragraph (a) of subsection 1 of NRS 362.115.*

2. The county treasurer shall apportion to each local government or other local entity an amount calculated by:

(a) Determining the total of the amounts obtained by multiplying, for each extractive operation situated within its jurisdiction, the net proceeds of that operation and any royalty payments paid by that operation, by the rate levied on behalf of that local government or other local entity;

(b) Adding to the amount determined pursuant to paragraph (a) a pro rata share of any penalties and interest collected by the Department for the late payment of taxes distributed to that local government or local entity; and

(c) Subtracting from the amount determined pursuant to paragraph (b) a commission of 3 percent of that amount which must be deposited in the county general fund.

3. The amounts apportioned pursuant to subsection 2, including, without limitation, the amount retained by the county and excluding the percentage commission, must be applied to the uses for which each levy was authorized in the same proportion as the rate of each levy bears to the total rate.

4. The Department shall report to the State Controller on or before May 25 of each year the amount received as tax upon the net proceeds of geothermal resources which equals the product of those net proceeds multiplied by the rate of tax levied ad valorem by the State of Nevada.

Sec. 6. NRS 369.370 is hereby amended to read as follows:

369.370 1. For the privilege of importing, possessing, storing or selling liquors, all licensed importers and manufacturers of liquor in this State shall pay the excise tax imposed and established by this chapter.

2. If, after the tax is paid on any such liquor, satisfactory evidence is presented to the Department that the imports have been actually exported and sold outside this State in a manner not in conflict with the law of the place of sale, the Department shall direct that a refund or credit of the tax so paid be made to the taxpayer. The taxpayer shall report all such exports and imports, and pay the tax on the imports monthly, on forms and subject to regulations prescribed by the Department.

3. The excise tax imposed by this chapter is due on or before the 20th day of the following month. If all such taxes are paid on or before the 15th day of the following month, a discount in the amount of ~~{0.5}~~ 0.25 percent of the tax must be allowed to the taxpayer. The Department may, for good cause, extend for not more than 15 days after the date the tax is due the time for paying the tax if a request for such an extension of time is received by the Department on or before the date the tax was due. If such an extension is granted, interest accrues from the original date the tax was due.

4. The Department shall allow refunds or credits on any shipments lost, stolen or damaged in transit, or damaged or spoiled on the premises, may require all claims in connection therewith to be sworn to and may make ratable tax adjustments, credits or refunds to effectuate the purposes of this chapter.

Sec. 7. NRS 370.220 is hereby amended to read as follows:

370.220 In the sale of any cigarette revenue stamps or any metered machine settings to a licensed cigarette dealer, the Department and its agents shall allow the purchaser a discount of ~~{0.5}~~ 0.25 percent against the amount of excise tax otherwise due for the services rendered in affixing cigarette revenue stamps or metered machine impressions to the cigarette packages.

Sec. 8. NRS 370.450 is hereby amended to read as follows:

370.450 1. Except as otherwise provided in subsection 2, there is hereby imposed upon the purchase or possession of products made from tobacco, other than cigarettes, by a customer in this State a tax of 30 percent of the wholesale price of those products.

2. The provisions of subsection 1 do not apply to those products which are:

- (a) Shipped out of the State for sale and use outside the State;
- (b) Displayed or exhibited at a trade show, convention or other exhibition in this State by a manufacturer or wholesale dealer who is not licensed in this State; or
- (c) Acquired free of charge at a trade show, convention or other exhibition or public event in this State, and which do not have significant value as determined by the Department by regulation.

3. This tax must be collected and paid by the wholesale dealer to the Department, in accordance with the provisions of NRS 370.465, after the sale or distribution of those products by the wholesale dealer. The wholesale dealer is entitled to retain ~~{0.5}~~ 0.25 percent of the taxes collected to cover the costs of collecting and administering the taxes if the taxes are paid in accordance with the provisions of NRS 370.465.

4. Any wholesale dealer who sells or distributes any of those products without paying the tax provided for by this section is guilty of a misdemeanor.

Sec. 9. NRS 370.490 is hereby amended to read as follows:

370.490 1. The Department shall allow a credit of 30 percent of the wholesale price, less a discount of ~~{0.5}~~ 0.25 percent for the services rendered in collecting the tax, for products made from tobacco, other than cigarettes, upon which the tax has been paid pursuant to NRS 370.450 and that may no longer be sold. If the products have been purchased and delivered, a credit memo of the manufacturer is required for proof of returned merchandise.

2. A credit must also be granted for any products made from tobacco, other than cigarettes, shipped from this State and destined for retail sale and consumption outside the State on which the tax has previously been paid. A duplicate or copy of the invoice is required for proof of the sale outside the State.

3. A wholesale dealer may claim a credit by filing with the Department the proof required by this section. The claim must be made on a form prescribed by the Department.

Sec. 10. NRS 372.370 is hereby amended to read as follows:

372.370 1. Except as otherwise provided in subsection 2, if the taxes imposed by this chapter are paid in accordance with NRS 372.355, a taxpayer may deduct and withhold from the taxes otherwise due from him ~~{0.5}~~ 0.25 percent of those taxes to reimburse himself for the cost of collecting the tax.

2. The regulations adopted by the Department pursuant to NRS 360B.110 may authorize the deduction and withholding from the taxes otherwise due from a taxpayer such other amounts as are required to carry out the Streamlined Sales and Use Tax Agreement.

Sec. 11. NRS 374.375 is hereby amended to read as follows:

374.375 1. Except as otherwise provided in subsection 2, if the taxes imposed by this chapter are paid in accordance with NRS 374.360, a taxpayer may deduct and withhold from the taxes otherwise due from him ~~{0.5}~~ 0.25 percent thereof to reimburse himself for the cost of collecting the tax.

2. The regulations adopted by the Department pursuant to NRS 360B.110 may authorize the deduction and withholding from the taxes otherwise due from a taxpayer such other amounts as are required to carry out the Streamlined Sales and Use Tax Agreement.

Sec. 12. NRS 482.313 is hereby amended to read as follows:

482.313 1. Upon the lease of a passenger car by a short-term lessor in this State, the short-term lessor shall charge and collect from the short-term lessee:

- (a) A governmental services fee of 6 percent of the total amount for which the passenger car was leased, excluding the items described in subsection 7;
- (b) Any fee required pursuant to NRS 244A.810 or 244A.860; and
- (c) A recovery surcharge fee of 4 percent of the total amount for which the passenger car was leased, excluding the items described in subsection 8, as reimbursement for vehicle licensing fees and taxes paid by the short-term lessor.

↪ The amount of each fee charged pursuant to this subsection must be indicated in the lease agreement.

2. The fees due from a short-term lessor to the Department of Taxation pursuant to subsection 1 are due on the last day of each calendar quarter. On or before the last day of the month following each calendar quarter, the short-term lessor shall:

(a) File with the Department of Taxation, on a form prescribed by the Department of Taxation, a report indicating the total amount of:

- (1) Each of the fees collected by the short-term lessor pursuant to subsection 1 during the immediately preceding calendar quarter; and
- (2) Vehicle licensing fees and taxes paid by the short-term lessor pursuant to this chapter during the immediately preceding calendar quarter.

(b) Remit to the Department of Taxation:

(1) The fees collected by the short-term lessor pursuant to paragraphs (a) and (b) of subsection 1 during the immediately preceding calendar quarter; and

(2) ~~[One-quarter]~~ *One-half* of the fees collected by the short-term lessor pursuant to paragraph (c) of subsection 1 during the immediately preceding calendar quarter.

3. Except as otherwise provided in a contract made pursuant to NRS 244A.820 or 244A.870, the Department of Taxation shall deposit ~~[all]~~ :

(a) *All the* money received from short-term lessors pursuant to the provisions of ~~[-~~

~~(a) Subparagraph~~ *subparagraph* (1) of paragraph (b) of subsection 2 with the State Treasurer for credit to the State General Fund; ~~and~~

~~(b) Subparagraph~~

*(b) One-half of the money received from short-term lessors pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 2 with the State Treasurer for credit to the State General Fund; and*

*(c) One-half of the money received from short-term lessors pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 2 with the State Treasurer for credit to the State Highway Fund for administration pursuant to subsection 8 of NRS 408.235.*

4. To ensure compliance with this section, the Department of Taxation may audit the records of a short-term lessor.

5. The provisions of this section do not limit or affect the payment of any taxes or fees imposed pursuant to the provisions of this chapter.

6. The Department of Motor Vehicles shall, upon request, provide to the Department of Taxation any information in its records relating to a short-term lessor that the Department of Taxation considers necessary to collect the fees described in subsection 1.

7. For the purposes of charging and collecting the governmental services fee described in paragraph (a) of subsection 1, the following items must not be included in the total amount for which the passenger car was leased:

(a) The amount of the fees charged and collected pursuant to paragraphs (b) and (c) of subsection 1;

(b) The amount of any charge for fuel used to operate the passenger car;

(c) The amount of any fee or charge for the delivery, transportation or other handling of the passenger car;

(d) The amount of any fee or charge for insurance, including, without limitation, personal accident insurance, extended coverage or insurance coverage for personal property; and

(e) The amount of any charges assessed against a short-term lessee for damages for which the short-term lessee is held responsible.

8. For the purposes of charging and collecting the recovery surcharge fee described in paragraph (c) of subsection 1, the following items must not be included in the total amount for which the passenger car was leased:

(a) The amount of the fees charged and collected pursuant to paragraphs (a) and (b) of subsection 1;

(b) The amount of any charge for a collision damage waiver or a similar instrument that acts as a waiver of the short-term lessor's right to collect from the short-term lessee for any damage to the passenger car;

(c) The amount of any charge for fuel used to operate the passenger car;

(d) The amount of any fee or charge for the delivery, transportation or other handling of the passenger car;

(e) The amount of any fee or charge for insurance, including, without limitation, personal accident insurance, extended coverage or insurance coverage for personal property;

(f) The amount of any charges assessed against a short-term lessee for damages for which the short-term lessee is held responsible; and

(g) The amount of any concession fee or charge that the short-term lessor:

(1) Is required to pay to do business at an airport, if applicable; and

(2) Passes on to the short-term lessee of the passenger car.

9. The Executive Director of the Department of Taxation shall:

(a) Adopt such regulations as he determines are necessary to carry out the provisions of this section; and

(b) Upon the request of the Director of the Department of Motor Vehicles, provide to the Director of the Department of Motor Vehicles a copy of any record or report described in this section.

10. As used in this section, "vehicle licensing fees and taxes" means:

(a) The fees paid by a short-term lessor for the registration of, and the issuance of certificates of title for, the passenger cars leased by him; and

(b) The basic and supplemental governmental services taxes paid by the short-term lessor with regard to those passenger cars.

Sec. 13. NRS 519.130 is hereby amended to read as follows:

519.130 1. Except as otherwise provided in subsection 4, every person or firm engaged in the business of assaying within this state shall, in each report or other document containing the results of an assay conducted by the person or firm which is created or produced for a commercial purpose, provide in the report or document a statement, prominently displayed and in bold type, which reads substantially as follows:

The results of this assay were based solely upon the content of the sample submitted. Any decision to invest should be made only after the potential investment value of the claim or deposit has been determined based on the results of assays of multiple samples of geologic materials collected by the prospective investor or by a qualified person selected by him and based on an evaluation of all engineering data which is available concerning any proposed project.

2. Any person or firm who knowingly violates the provisions of subsection 1 is:

(a) For the first violation, guilty of a misdemeanor.

(b) For a second or subsequent violation, guilty of a gross misdemeanor.

3. The right to enforce the provisions of this section vests exclusively in the Attorney General.

4. The provisions of this section do not apply to a person who is required to file an annual statement ~~for list~~ pursuant to the provisions of NRS 362.110.

5. As used in this section, "business of assaying" means a business that determines the elemental composition of samples of geologic materials for a fee or other valuable consideration.

Sec. 14. 1. Each person required to pay the tax on the net proceeds of minerals shall pay:

(a) The tax determined pursuant to NRS 362.130, as that section reads prior to amendment by section 3 of this act, for the calendar year 2008; and

(b) The estimated tax for the calendar year 2009 pursuant to NRS 362.115, as amended by section 2 of this act.

2. For the calendar year 2009, the amount appropriated to each county pursuant to NRS 362.170 must be determined based upon the sum of:

(a) The amount paid pursuant to NRS 362.130, as that section reads before amendment by section 3 of this act, based upon the tax paid for the calendar year 2008; and

(b) The estimated tax for the calendar year 2009 paid pursuant to NRS 362.115, as amended by section 2 of this act.

Sec. 15. 1. The amendatory provisions of section 12 of this act do not apply to any recovery surcharge fees collected pursuant to subsection 1 of NRS 482.313 before January 1, 2009.

2. Except as otherwise provided in subsection 1 and notwithstanding the provisions of subsection 3 of section 16 of this act, the amendatory provisions of section 12 of this act shall be deemed to apply to any recovery surcharge fees collected pursuant to subsection 1 of NRS 482.313 before July 1, 2009.

Sec. 16. 1. This section and sections 2, 4, 14 and 15 of this act become effective upon passage and approval.

2. Sections 6 to 12, inclusive, of this act become effective on January 1, 2009.

3. Sections 4 and 6 to 12, inclusive, of this act expire by limitation on June 30, 2009.

4. Sections 1, 3, 5 and 13 of this act become effective on July 1, 2009.

5. Sections 1, 2, 3 and 5 of this act expire by limitation on June 30, 2011.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

Amendment adopted.

Senator Care moved that all necessary rules be suspended, that the reprinting of Senate Bill No. 2 be dispensed with, and that the Secretary be authorized to insert Amendment No. 1 adopted by the Senate.

Motion carried.

Remarks by Senators Hardy, Cegavske and Mathews.

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

Thank you, Mr. President. On the advice of Counsel, I am going to briefly restate the reasons for my abstention again as I stated in the Committee of the Whole. I am the President of the Associated Building and Contractors. I do have members who are associate members that this collection-credit part may apply to. I do not think that it impacts them, certainly not more than anybody else in the retail business or any other business that collects a sales tax. However, out of an abundance of caution, until we get the standard clarified for abstentions and disclosures, I am going to abstain. Thank you.

Senator Cegavske requested that her remarks be entered in the Journal.

Thank you, Mr. President. On the same advice from our Legal Counsel, I would like to disclose that my husband is the general manager for Crawford Coin, a company that has units that sell gas and other products at retail. Those units collect taxes on the sale of liquor, cigarette and other tobacco products. Sections 6 through 11 of Senate Bill No. 2 reduce the amount that retailers can retain as a collection allowance from the taxes collected on liquor, cigarette and other tobacco products for a period of six months. Because the benefit or detriment occurring to my husband's employer, as a result of the passage of this bill, is not greater than that occurring to any other retailer, the presumption of independence of judgment technically applies. However, I am going to abstain from voting on this bill because I believe that my private commitment to my husband affects my decision on this bill because of the fiscal impact that this bill has on my husband's employer.

Senator Mathews disclosed that she is a retailer in Nevada.

Roll call on Senate Bill No. 2:

YEAS—19.

NAYS—None.

NOT VOTING—Cegavske, Hardy—2.

Senate Bill No. 2 having received a two-thirds majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Assembly Bills Nos. 1 and 2 with Senator Care as Chair of the Committee of the Whole.

Motion carried.

Senate in recess at 2:56 p.m.

#### IN COMMITTEE OF THE WHOLE

At 3:10 p.m.

Senator Care presiding.

Assembly Bills Nos. 1 and 2 considered.

The Committee of the Whole was addressed by Senator Care; Gary Ghiggeri; Senate Fiscal Analyst; Senator Coffin; Mike Willden, Director, Department of Health and Human Services; Dr. Harold Cook, Administrator, Mental Health and Human Services; Senator Horsford; Senator Carlton; Senator Raggio; Jeff Fontaine, Executive Director of NACO; Bill Welch, Chairman, Nevada Hospital Association; Senator Washington; Senator Cegavske; John O. Swendseid, Bond Counsel to the State of Nevada; Kate Marshall, Nevada State Treasurer; Senator Townsend; Kevin Powers, Senate Legal Counsel and Senator Hardy.

SENATOR CARE:

I will open the hearing on Assembly Bill No. 1.

MR. GHIGGERI:

The one-time reversion of Insurance Verification Funds is in Assembly Bill No. 1. This legislation requires the State Controller to transfer the sums discussed earlier from various funds and accounts to the State General Fund budget reserves to offset the differences between the projected revenues and collections used to meet the General Fund shortfall under sections 1 through 17 of the bill.

Section 18 of the bill indicates these transfers do not apply to the extent that they would constitute impairment of the rights of holders of bonds or similar obligations issued to the State.

Section 21 of the bill requires that the money transferred pursuant to sections 1 through 17 revert to the State General Fund at the close of FY 2008-2009.

Senator Lee had a question this morning on section 7. This is the \$5-million transfer from the Millennium Scholarship Trust Fund. There is no provision being made in any legislation being considered today to repay that transfer, and based upon our estimate at this time, the Millennium Scholarship Trust Fund would be whole through 2015 so the 2011 or 2013 Legislature will have a chance to revisit this. I would like to point out that S.B. 4 of the 22nd Special Session appropriated \$35 million from the General Fund to the Millennium Scholarship Trust Fund.



SENATOR COFFIN:

I would like to ask a general question of the Department of Health and Human Services. The question applies to your budgets and has to do with the waiting lines and lack of services or denial and delay of services. We cannot see these things on a spreadsheet. We cannot tell what we are doing to people who depend on services of your agency. Can you tell us if any of the accounts that are being touched are reducing services to people? We have been getting mail from people who are in transition services. They are losing housing or losing assistance. Can you tell me if that is happening?

MIKE WILLDEN (Director, Department of Health and Human Services):

There are many rumors, and most are false rumors. One thing to keep in mind is that as we have gone through the budget reductions, each one of the reductions has impacts. Many of them have had significant impacts in the beginning. As we have prepared the budget reduction lists, there are lists submitted to the Budget Office for consideration and to the Governor for consideration. We have to hold public hearings because we anticipate having to implement something at a future date. When we hold the hearings, we notify the public and say these services may be cut, and in many cases, we back off a public hearing because that cut is not necessarily taken off the 4-percent, 7-percent or 11-percent cut list. We are duty bound to start the public-notification process when we know what is going on. If not, we lose a month or two of implementation. Then some things are not chosen from the list. I would like to go through the list and tell you where there is an impact or not, then open up for questions.

SENATOR CARE:

Before you do, this strays into the scope of Assembly Bill No. 2, but I will allow this discussion at this time.

MR. WILLDEN:

In Assembly Bill No. 1, there are two reductions: the Indigent Accident Fund for \$25 million and the Telecommunications Devices for Persons with Communications Difficulties Fund for \$800,000. Neither one of those reductions have a client-services impact in the Department. There were 27 hospitals who received payments from the Indigent Accident Fund in 2008. The proposal is for a one-time sweep of that account. That \$25 million would not be available to pay indigent accident claims or catastrophic claims. A person is not going to go without service, but a hospital will go without a pay source. In the communications line, there is a 3-cent tax on telephone communication lines. That fund has been building up. We feel that, in cooperation with the PUC, we can sweep \$800,000 out of that account and not impact current service levels. Those are reflected in Assembly Bill No. 1.

In Assembly Bill No. 2, there is a list of reductions we will make. There is a reduction of \$851,000 which sweeps more of the tobacco payment to be received in April 2009. There are rumors that we are going to do mid year grant reductions. That is not true. This would not cause us to do any mid year grant reductions. This will reduce expenditures in the Disability Services and the National Drug Code Utilization Nevada Medicaid Accounts

The Office of Disability Services has \$500,000 reduced in Disability Services. In consultation with the office, Todd Butterworth does not think they will spend this money. Yes, there are people who are on the waiting lists, but we will not be taking people off the waiting lists and revert this. It is not taking anyone out of a current service, but it further delays wait lists.

The National Drug Code Utilization, for \$6.8 million, is a program we implemented last January under the Deficit Reduction Act. There have been more savings than we anticipated by implementing that federal law. We had about \$1 million of savings in one of the first round of cuts, and after seeing the actual implementation of that federal law, we are actually seeing \$6.8 million worth of additional savings.

The \$1.49 million Clawback Shift to the counties is a new practice we have already implemented. When Medicare Part D was implemented, the federal government picked up a big piece of the prescription-drug costs for low-income individuals. We pay what is called a "clawback." It is a complicated formula in federal legislation where the State has to give the federal government back some money for doing that. In county-match cases, the way we cover cases in Nevada, the federal government always participates in the costs, and sometimes, the

counties are the non federal share, and sometimes, the state is the non federal share. This is shifting the cost of the county claims to the counties.

The Personal Care Attendant account provides a savings of \$2.2 million. We already implemented a reduction at the special IFC meeting held in August 2008. It approved a reduction of the personal-care attendant hours of about one hour per day for bathing, feeding and grooming time. That reduction was limited to about an hour a day. As we have analyzed those savings, this is additional savings. We anticipated saving about \$1.6 million, but it actually saved almost \$3.8 million.

The Division of Aging Services, Elder Protection Services/Homemaker Programs reflects vacancy savings we will have available.

There is money left over in the Senior Citizen Property Tax Assistance Account. At the last IFC meeting, we voted as to how much money should be spent for the property-tax rebate. We sent out 13,000 checks to seniors for an average rebate of about \$300 per rebate.

The Senior Rx Program saved \$900,000. We have already reverted about \$12 million out of that account in previous budget cuts. As we go through the year and get closer to our actuals, this is an additional savings that will be available largely because of the implementation of Medicare Part D. We do not see anyone going without.

The Division of Welfare and Supportive Services reflects a savings of \$3.9 million because we have recently learned of the potential opportunity to receive up to \$6.6 to \$8.8 million in TANF contingency funds for high unemployment states/high food-stamp states under which we qualify for both. These are funds, if we work collaboratively with the Department of Employment Training and Rehabilitation, the University and a few other providers, for which we believe we can certify a match to the federal government, and get this additional money. No one will have services reduced.

The Welfare One-Shot Funding is money appropriated for equipment and computers. They will not be purchased.

The Welfare Child Support Enforcement Program is funded out of what we call the State Share of Collections when child support money is collected. There is a reserve in this fund that we are supposed to be using to implement several audit findings by the Legislature and by the company employed, named MAXIMUS, to improve the child-support program. We will be reducing that reserve by \$250,000.

The Division of Mental Health and Developmental Services medication clinics of southern and northern Nevada. have about a \$30-million budget. They had a significantly large inventory at the beginning of the year, and they have increased their patient assistance funds from the pharmaceutical manufacturers. This is money that is in reserve that will not be needed in the medication clinics.

SENATOR COFFIN:

The ability to bring this much money back from this account caught my attention. Early this year, we talked about the possibility of getting more medications from the industry. We did not contemplate we would get back this much. Did we over budget? I am concerned that we are on the third round of cuts, and now, we are suddenly finding we can get \$11.5 million more. It is more money than we should have put in the budget. What happened? Are we digging a deeper hole with these cuts in the next biennium? We need to talk about taxes. Before we talk about taxes, we need to talk about what we are going to spend. Where should we restore this account to if we are going to be realistic about what it should be?

MR. WILLDEN:

I wish I would have known last summer that we were going to have this kind of a reserve. We made some reductions in Mental Health Services and Disability Services not thinking this kind of money would be there. I spent a lot of time trying to find what was in the inventory and how much could we get out of other programs. It is still shocking to me that staff says this is available. Dr. Cook has analyzed this and says it is available. I would not have recommended some of the other cuts last summer had I known this money was available. But, then, we would not be sitting here today with this \$11 million to fill the shortfall hole.

DR. HAROLD COOK (Administrator, Mental Health and Human Services):

The \$11.3 million amount is startling. There are a number of reasons why we have that surplus.

For the Northern Nevada Adult Mental Health and Southern Nevada Adult Mental Health, in the 2003-2005 biennium when we prepared our budgets, we improperly doubled inflation for the base year in our budgets. This resulted in asking for more money than we needed. As you may recall, in those biennia, the medication inflation was enormous. There were a few years where the combined inflation factor was in the 25-percent to 30-percent range. When you add additional inflation in, you end up asking for more money. That is one factor.

We have increased our ability to pay patient-assistance programs and sample medications. In FY 2008, we were able to get more than \$2 million in free medications, and we are on track to exceed that this fiscal year. We are supplanting the General Fund medications with free medications.

This information is based on in-depth analysis by fiscal and pharmacy staff over the past few months. We are confident that we can go forward with a reduced budget. One of the things we found recently is that we are doing a better job of deflecting medication clinic clients from our medication clinic pharmacies. For every 100 clients that we have in medication clinics about 40-45 of those clients are being deflected to private pharmacies. These people are Medicaid recipients or Medicare Part D recipients. They do not need indigent medications from the State. We have increased our ability to identify these individuals to take them off our pharmacy caseload.

There are a few factors unique to southern Nevada. Between 2003 and 2006, Southern Nevada Adult Mental Health recorded an enormous caseload growth. No one questioned that because it corresponded with the enormous growth going on in the community. At the end of 2005, an audit was done, and it was found that there were a significant number of inactive cases. These people were still on the caseload but were not receiving services. As a result of that growth, we put in our budget medication money to take care of the additional caseload that was not there. At the end of 2005, beginning with 2006, we saw a reduction in caseload at Southern Nevada Adult Mental Health of about 2,000 cases. We topped out at 10,400 cases. Currently, the caseload is just less than 8,000. Some of the savings comes from there.

Last year, we closed the North Las Vegas pharmacy. We had intended to reopen that pharmacy when we found a new location. After several budget cuts, we determined we can no longer open that clinic and the corresponding pharmacy so the inventory from that pharmacy is available for use, and we do not need to replace it. All those things add up to \$11 million to \$12 million in savings. All of those things will not reoccur in the future. We are anticipating that our budget requests for 2010-2011 is \$10 million or \$12 million less than previous budgets.

SENATOR COFFIN:

Thank you for your candid admissions. This is something that would normally be discussed in detail during a full Finance Committee meeting. I am sorry the other budgets were reduced because of this. I think we can move forward from there.

SENATOR CARE:

We have strayed into some of the areas covered by Assembly Bill No. 2, and when we start the discussion on Assembly Bill No. 2, I will point out that some of the testimony from Assembly Bill No. 2 is contained in the record of Assembly Bill No. 1.

MR. WILLDEN:

There has been a lot of concern that this has something to do with the Preferred Drug List (PDL). I want to be clear that these saving have nothing to do with the PDL. We have not done anything different with the PDL. These are things that Dr. Cook has talked about. We have not gone around any legislative intent on the PDL. We do anticipate submitting legislation for the full legislative committee hearing in February and nothing with the PDL.

We have savings listed in the Division of Child and Family Services-Elko, Nevada, Youth Training Center budget, the Caliente Youth Center budget and savings in the information technology budget. The savings available in the Nevada Youth Center are in the budgeting of the 160 beds, reduced to 100 beds. That allows us to take a cottage off-line, bringing us a savings to

the end of the year. In Caliente, we were budgeted for 140 beds, reduced to 111 beds. We can take 20 units off-line. They have been off-line the entire year. There were some capital-improvement retrofits going on. We have to rotate through the units taking staff from the units. The information technology savings are in vacant positions we will not fill between now and the end of the year.

SENATOR HORSFORD:

Thank you for being here today. Your explanation has been instructive. As difficult as these options are, I want to commend you for the process you undertook in your Department to do the analysis necessary to bring forward the types of recommendations you have. There were a number of other considerations proposed over the last few weeks. Many of those were direct services to individuals served by the Department. The fact that you were able to exclude some of those and address those with as little impact as possible is commendable. I would like to ask about the analysis piece because the information is instructive. As we approach the upcoming biennium, what resources do you have in place to be able to do this type of review? How often are you able to do it? The issue raised by Senator Coffin about how \$11.4 million was identified is important. Is there something we could have caught earlier in the process? Do you have adequate resources to do the analysis of the other programs recognizing that you are a large Department and oversee many different services?

MR. WILLDEN:

We have adequate resources. We do monthly budget-status reports within the Department. Each budget account does some sort of an analysis. We have been asked why we did not notice the medication clinic. We did. We could see a lack of spending going on in the medication clinic. That tells you either you do not have patients asking for anything, which I know does not happen, or you are drawing down inventory which is what they were doing. They had a large inventory on hand. We did not see the buy going on. We were not purchasing drugs. We questioned that a few times. People said it was going to turn around, and it did not. Halfway through the year, we found there was money available. The question was asked several times during the analysis process. We meet frequently with our administrative team, and we have a team in our organization called the Fiscal Analysis Team. They met periodically to go over all of the budgets. They question each other. We have caseload analysis teams that meet also. It is not that we are without information, it is sometimes the interpretation of the information where someone sees something others do not. It was not a surprise. We saw it for several months, but it was explained away that it would turn. It did not.

SENATOR HORSFORD:

What are your anticipated projections for caseloads, particularly, in some of these areas with the TANF programs and some of the programs being accessed by a greater number of people because they are losing their jobs and losing their health insurance?

MR. WILLDEN:

We have been hard at determining that since we submitted the agency request budget. The projections are shocking. The caseload projections, particularly those caseloads dependent on the variability of the economy, TANF, Food Stamps, Medicaid and Nevada Checkup, all have a variable in our forecasts for the employment variable. As the unemployment rate goes up or the employed count goes down, our projections are all on a 45 degree slopes on the chart. We are projecting it will turn in 1.5 years, but we have tried to double down during the last several months. We hired a new econometrician from Oregon, who is on staff in my office. We work closely with the Department of Employment Training/Rehabilitation and their economists. We work with the State Budget Office and their economists. We are all trying to figure out what the forecasts are. They are all on the upslope right now. This will be a difficult challenge for all of us in 2010-2011. Unless the application rates break, the caseload increases are astonishing.

SENATOR HORSFORD:

Are the projections through the end of this fiscal year, specifically? Do you have adequate resources and have you budgeted adequately for what you project to see through the end of this fiscal year?

MR. WILLDEN:

With one exception, Medicaid. Part of the whole package of budget cuts 1, 2, 3 and 4 there was a \$60-million supplemental set aside for Medicaid. That has grown to an \$88 million supplemental needed by the end of the year. There are some offsets and carry forwards from the previous year. We will still need a \$38-million Medicaid supplemental. That is to keep up with the caseload growth before the end of the year. That has been factored in to all of the work that the fiscal staffs have done. If we balance today's work, that is theoretically accounted for.

SENATOR CARLTON:

Since we have mentioned Medicaid, I remember there were some discussions during the last few months about paying Medicaid and the hurdles in regard to Medicaid. With these proposals and the passage of these bills, will some of the hurdles disappear?

MR. WILLDEN:

Yes. We need a \$40-million supplemental to get us through to the end of the year. At the next IFC, we are moving a lot of money around in reserves to pay categories. The most current one that will run out is our ability to pay child-welfare Medicaid-related claims at the end of February or March. The next IFC meeting is a crucial meeting to move money there. It is cash flow and moving money around. We will need the ultimate supplemental later to get through to the end of the year. We hope that caseloads will stay as we projected them. We hope the utilizations and the costs for claims stay reasonable. With that supplemental, we will end the year okay.

SENATOR CARLTON:

Is it possible to say that the healthcare providers who do Medicaid in this State can breathe a sigh of relief for a few more weeks? Or should they still be anxious?

MR. WILLDEN:

I would like to be able to say something with good news. I think, based on the package today, we are finished cutting for a while. My share of the bigger hole needs to be filled with something else. If there is a fifth round of cuts, we would have to go to rate reductions.

SENATOR RAGGIO:

Mr. Ghiggeri, is the number we are showing for the Protective Supplemental Appropriations consistent with the testimony we have just heard?

MR. GHIGGERI:

I believe the amount we settled on was the \$92-million need offset by reducing some reductions that have been previously made by approximately \$20.9 million for a net supplemental appropriation of approximately \$71 million. That is just for the Medicaid Program. We are also contemplating a supplemental appropriation of approximately \$15 million for the Division of Child and Family Services.

SENATOR RAGGIO:

So, it is consistent? I do not understand that.

MR. WILLDEN:

Mr. Ghiggeri mentioned a new item I have not talked about. In the Child Welfare Programs, there is an additional supplemental. It is not Medicaid related.

SENATOR RAGGIO:

I just want to make certain the number we are operating with in our projected plan with the shortfalls and the necessary appropriations and transfers, is accurate.

MR. GHIGGERI:

I believe it is.

MR. WILLDEN:

I am looking at these numbers. We have \$88 million or \$92 million. I am not certain where we settled. Let us call it \$90 million. We have a November work program that offsets that by

\$19 million. The upcoming January work programs will offset that by \$31 million. Those together are \$50-million offsets toward the overall shortfall. That shortfall should be in the neighborhood of \$38 million.

MR. GHIGGERI:

The pending work program I have no knowledge of is \$31 million. If that is processed, it would take money that has been already reserved for reversion and reduce that, which would be a wash against the total projected shortfall.

SENATOR CARE:

Are there any other representatives from divisions, departments or agencies who any of the committee members want to hear from at this time? This testimony would be on Assembly Bill No. 1 only.

Are there any more representatives in the room who would like to testify on Assembly Bill No. 1 only?

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

On behalf of NACO, I would like to say we understand the dire situation the State is in and the difficult choices that must be made. We appreciate the hard work and anguish that went into putting together this plan to address a shortfall of historic proportions. We recognize there is no acceptable alternative to finding \$25 million to make up for the sweep of the Fund for Hospital Care for the Indigent.

I would be doing a disservice to the counties if I did not go on record in expressing our concerns about the sweep of the fund for hospital care for indigents. Counties are the safety net for the medically indigent. They are for people who do not have insurance, who cannot pay their medical bills and is something that has been mandated by the Legislature.

The question becomes, what happens when those funds are no longer available? In the 1980s, there was a motor-vehicle crash in Pershing County. The indigent victims had to be treated at a hospital. Twenty-five years ago, Pershing County had to come up with nearly \$250,000 to pay for medical care for those indigent persons. In today's world, the claim would probably be \$500,000.

That kind of an event can occur on any of the highways in the rural counties. It is not the hospital where they are treated where the accident occurs, it is a bill sent to the county. If you are a county that owns and operates a hospital, those are costs that have to be absorbed. County hospitals will have to make tough decisions about reducing care or eliminating services. If you are a county government and that bill comes, whether or not you have the funds, you pay the ill. Prior to the implementation of this fund, there were several lawsuits between hospitals and counties trying to recover the funds.

Mr. Willden and I have talked about this. His response to the question in the Assembly was that the State is not on the hook to pay these bills, but the county is not off the hook to pay these bills.

I understand that, and I am not here to oppose the sweep; although, it is not something we would like to see, but I wanted the record to reflect our concerns about the impacts to the county governments. If possible, I would like to plant the seed in your minds that come February 2009 a restoration of the funds to pay these claims should be considered.

SENATOR CARLTON:

Thank you, I believe some of this discussion is more related to Assembly Bill No. 2 than to Assembly Bill No. 1.

SENATOR CARE:

We are discussing section 10 of Assembly Bill No. 1.

SENATOR CARLTON:

When we talk about the sweeps and reversions of these Indigent Accident funds, how often do the hospitals bill to this fund?

MR. FONTAINE:

NACO actually administers the program for a board that is comprised of five county commissioners. That board meets twice a year. They process the claims. In June, claims for all the supplemental indigent-care expenses are submitted and claims for the Indigent Accident Fund (IAF) for the half year is submitted. In the fall, claims are submitted for the IAF. To date, in this fiscal year, there is about \$2.7 million in claims outstanding. There will be no more claims on the fund until June when the remainder of the claims will be received, and the fund will pay out those claims.

SENATOR CARLTON:

If I understand correctly, there is \$2.7 million that has not been included in this calculation. There will be no more payments after the passage of this bill. We could add that \$2.7 to this number.

MR. FONTAINE:

I believe the \$2.7 million is part of the \$25 million.

SENATOR CARLTON:

That is included and is not in addition to. They are already responsible for \$2.7 million, and there is no reimbursement in the future under these guidelines. Is that correct?

MR. WILLDEN:

Mr. Fontaine is correct. Twice a year there is a request to pay bills. There is \$9 million in the account. We expect that, by the end of the year, the account will have about \$25 million in it. The account is funded between two funding streams. There is 1.5 cents for the IAF on property tax and 1 cent for the supplemental for a total of 2.5 cents on the property tax. Together, those taxes will make roughly \$25 million in revenue by June 30. There is \$9 million in the account now. The claims they submitted to us last month amounted to \$2.7 million, and I asked staff not to pay those until the discussion today. We would normally have had \$2.7 million paid out, and our \$9 million cash balance would be down to somewhere around \$6 million. Then, it would build back up to June where there would be a large number of claims in June, and we would pay out the remaining \$21 million or \$22 million.

SENATOR CARLTON:

We are discussing \$24 million. The list I have says that our county hospital in Clark County, the University Medical Center (UMC), is into \$13.5 million. Since the State is known for stepping over a dollar to pick up a nickel, as you use this \$24 million and the cash flow goes through the State, is there a way to take this \$24 million and turn it into more so that maybe at the end we can pay the bills and come out a little ahead?

MR. WILLDEN:

The IAF, or the Fund for Hospital Care as it is called now, does not receive any federal matching funds. Claims come in. They are paid out of this property-tax supported fund. During the last several months, we have discussed with the Sage Commission, NACO and the Hospital Association as to whether there is a way to take the revenue stream and run it through the Medicaid program to try to turn \$25 million into \$50 million. That discussion was to try to improve services going forward to make certain the hospitals still get the \$24-million or \$25-million funding stream. By leveraging federal dollars, we would have a bigger pool of money and improve rates and services. We have not gotten that far along.

This decision today simply is taking this money, sweeping it into the General Fund, then, it is going to be part of the bailout of the Medicaid program. That will happen over the next few months. If we do not get that supplemental appropriation, we will need to reduce the Medicaid spending by \$50 million before the end of the year. There is \$25 million in the State General Fund and \$25 million in federal matching funds. We will need to reduce spending by that amount. In a sense, it is being matched this year, but it is not the concept of running it through and getting new spending going forward. We have not gotten there yet because of the need to just sweep it and be part of the offset and providing to the General Fund to keep Medicaid going as it is today with no new services, the same rates and the same anticipated caseload. This does

not leverage new federal dollars. It is using it as a match to get existing revenues streamed to the end of the year.

BILL WELCH (Chairman, Nevada Hospital Association):

I would like to acknowledge the difficult job before you, Mr. Chair and this administration. I would like to acknowledge the efforts you have made to minimize the impacts and to make them as little as you can as we go through this difficult process.

The Nevada Hospital Association is not here to speak in opposition to Assembly Bill No. 1 but only to emphasize some of the concerns we will be dealing with. As the economy has challenged the State, the economy is also challenging the hospital community, particularly, the acute-care hospital industry where we have to take anyone who presents themselves for health care. As a typical business, in a declining economy, your business goes down. It is the reverse for the hospital community. In this environment, our volume goes up. It is the volume of the uninsured, underinsured, as well as the Medicaid and other needy populations of the State.

The projection for unemployment is projected to be about an 80-percent increase over what it has been. We can see those types of increases in the uninsured. I understand the necessity for what is happening today. Today, hospitals already cover \$714 million, prior to the last budget reductions, in costs of uncompensated health-care services provided. That is our direct costs, not our charges.

The last budget cut approved in the 24th Special Session impacted the hospitals by an estimated \$16 million to \$19 million. At the \$16-million level, it moves us to \$730 million in costs of uncompensated care. We are now going to be looking at an increase in the uninsured population and in our hospital emergency rooms. If the uninsured increase corresponds with the same level of unemployment at 80 percent, we can see the uninsured cost of care increasing by an additional \$215 million. As you can see, we are now starting to push \$1 billion a year in costs of uncompensated care. On top of this, we had the \$25 million on the IFC subsweep. We understand what is happening and why it has to happen, but we think it needs to be clear in your minds about the potential repercussions that we may be seeing down the road. Our costs will continue to go up. We do not get to reduce our budgetary expenses. Our uncompensated reimbursement will go up.

We have two choices. One is to move some of the responsibility for funding the healthcare delivery system to that shrinking population that covers health care. Right now, that represents only 34 percent of the population that we care for. We see that 66 percent of the population treated in the hospital is not covered by the cost of health care. You have seen in the newspapers in the recent weeks services are being reduced or eliminated.

Hospitals are in the process of reducing or eliminating services based upon the cuts that they have already experienced and based upon the growth of the uninsured that we anticipate to see in the coming year. Hospitals already have to make decisions on what services they will be able to sustain. In the end, my hope is that as we move into the regular session, this issue can be revisited so that, hopefully, a more thought-out strategy can be considered on how we deal with this. We cannot continue in the direction we are going.

We would like to propose a few alternatives as to how this is handled today. We would suggest having this as a loan, paying out what has already been approved and then freezing the balance of the money. Mr. Willden pointed out the funds are not paid until the end of the year. I understand how unrealistic that is today. These are difficult choices, but I want you to understand the impacts we will be dealing with as we go forward.

I hope as you move into the regular session, that there will be serious consideration about how you are handling this today, and hopefully, there may be some opportunity and alternatives to restructure this piece of the package.

SENATOR WASHINGTON:

Can you give us a few examples of reforms the Hospital Association has talked about in regard to providing care and services that, hopefully, will not be eliminated, especially, for the indigent?



MR. WELCH:

The Hospital Association has been having numerous meetings through our Data Finance Subcommittee trying to look at alternatives. We have also offered to Mr. Willden and the Governor's Chief of Staff to work with them. While we are very concerned about the sweep of the IAF subfund as it is being done today, we understand that there may be some alternatives or opportunities to move those moneys and get federal matching dollars so instead of having \$25 million we have \$50 million. That is something we feel needs more time than a brief review and consideration.

We have more demand on services and more mandates than what are funded. If it is a commission that is put together to work with the Senate, the Assembly and the administration, then, we would like to be part of that. I do not have an answer for you today. We are just trying to keep our doors and our services open at this point. I apologize that I am not answering your question directly. We are looking at them right now, but most of our focus is how to sustain services. With what is happening, we are probably going to be pushed between 40 and 50 percent of our acute-care hospitals in a deficit state.

SENATOR WASHINGTON:

As we move closer to the next session, there may be some opportunities for meaningful reforms working with Mr. Willden's Department and the Hospital Association as well, such as looking at services provided, saving or cutting costs or in trying to find matching funds. I encourage you to make a presentation before us so that we can make some changes in the next session to offset or to not incur some of the reductions or cuts that we are making now. I would encourage you to do this in the next few months and get the information to us so we can move forward and be more proactive. Let us see what changes we can make.

MR. WELCH:

We would be more than happy to work with the administration, the Legislature and Mr. Willden on that. The unfortunate news is that most of the strategies we had been looking at are going to take increased funding. That is the challenge before us. I would like to acknowledge Mr. Willden and all of his staff and the administration for the efforts that have been put forward, particularly Mr. Willden in keeping the cuts as minimal as they have been today. It is a blessing to have someone like him there. Everyone we have been working with has understood the concerns.

SENATOR WASHINGTON:

If those services are not provided, then, the long-term and collateral effect is that we could lose providers or they move out of State. We would then have to relinquish those services to other states which may cost the State even more. There is a cause and effect. The sooner we address it and change or reform the issue, then, the State will be better off in the long run.

SENATOR HORSFORD:

I would like to underscore the comments you made, Mr. Welch. I agree with the issue of uncompensated care. We recognize that is the centerpiece on the health-care issue and that we have to come up with solutions on the long term.

Are there discussions or do you have contact with our Congressional Delegation as it relates to any assistance that the federal government may be able to provide through the stimulus package or other methods to increase the federal allocation for Medicaid?

MR. WELCH:

There is a consideration, and Mr. Willden can give better details for this. There is an FMAP adjustment for Nevada. That could be a significant enhancement for the funds that come in at the federal level. The Community Hospital Association has been contacting our Delegation in hope of getting support for that. That is part of the stimulus package that is being considered.

MR. WILLDEN:

I wanted to indicate that we are working on that. We think the fastest relief could be given as FMAP relief. Over the last year, we have lost 2.5 percentage points. That is about a \$22-million shift from the federal side of the ledger to the State side of the ledger if we could see some

progress going the other direction. One proposal is for 4 percent and one for 8 percent. The 4 percent is \$45 million. This would be good news. There are many things that the Center for Medicaid and Medicare Services has done over the last 1.5 years. There are several things that Medicaid will no longer pay for. We have lobbied hard to get some moratoriums in place on some of those. Those need to be figured out going forward, or we are going to lose Medicaid funding for a number of services.

Senator Amodei moved to do pass Assembly Bill No. 1.

Senator Horsford seconded.

SENATOR RAGGIO:

I would like to disclose that Mr. Wadhams is at this hearing and is a member of my law firm. I have not been lobbied by him, and I do not know what his position is. I cannot see any benefit to any client.

Motion carried unanimously.

SENATOR CARE:

We will now discuss Assembly Bill No. 2. We have been through the information contained in the bill twice, once this morning, and again this afternoon. We will discuss what is remaining with Mr. Ghiggeri.

MR. GHIGGERI:

Sections 1 and 3 of the bill will authorize the State Treasurer to establish a line of credit on behalf of the State with the Local Government Pool Investment Fund. John Swendseid is present to discuss any technical issues as related to this proposal.

Section 2 of this bill will require the Governor's proposed Executive Budget to include a Debt Service Plan in the budget he submits for consideration for the 2009 Legislature. There have been questions as to how this money will be paid back if it is required.

Sections 4 and 6 will implement the remaining reductions that have been discussed earlier this morning.

Section 5 of the bill will provide that the money provided in section 4 be transferred to the State General Fund Budget Reserve and that the revisions in the work programs be processed without further review by the IFC upon approval of the Chief of the Budget Division and the Senate and Assembly Fiscal Analysts.

Section 7 provides that the Norm Reference Examinations required to be administered will not be administered during the 2008-2009 fiscal school year to accommodate the budget reductions.

SENATOR CARE:

For those of you when it comes time to look at the legislative history and the record, I want the record to reflect that much of what we have discussed on Assembly Bill No. 2 will be contained in the minutes in the testimony on Assembly Bill No. 1. I would like to note the State Treasurer, Kate Marshall, is with us today.

SENATOR CEGAVSKE:

I have questions about the procedure in Assembly Bill No. 2, sections 1, 2 and 3. I am in complete agreement with the rest of the bill. It is unfortunate we did not separate these two bills.

I want to know what the consequences are if this loan is not repaid?

JOHN O. SWENDSEID (Bond Counsel to the State of Nevada):

I serve as the Bond Counsel to the State of Nevada and to many of its local governments. The Bond Counsel is a lawyer whose practice is to structure bond issues and to give legal opinions on bond issues to the government that is issuing bonds and to the investors in bonds that their bond is a valid and an obligation to the State.

The note proposed to be issued here is a general obligation of the State of Nevada to which the State's full faith and credit is paid.

Under our Constitution, the bill that authorizes Assembly Bill No. 2 is required to contain in it provisions for payment of the obligation. It does so by referencing the State's securities law. This is contained in and described in the opinions you received from the Legislative Counsel Bureau and from the Attorney General. The requirement incorporated by reference is that the State levy a tax sufficient to pay this bond as well as all other State general obligation bonds sufficient to pay them when due. In each budget year, you look at the budget including your budget for bond principle and interest and you determine how you are going to pay that. The bulk of it is paid with a 17-cent property tax. If it is your decision to use that tax to pay this obligation, that is fine. Your obligation, if you pass this bill and if any debt is incurred under this bill, is that you must fund it. If you do not find any other way to fund it, the property tax will be used to fund it.

SENATOR CEGAVSKE:

You indicated a plan, but there is no plan in this bill. I have been told the plan will be coming to the regular session. Is that your understanding? You said there is supposed to be a plan in here. I do not see a plan for paying it back other than what you have stated that there has to be tax revenue to pay it back.

MR. SWENDSEID:

That is true, and it is true of all of your other State general obligation debt. In each biennium, you decide how you are going to pay it back. A long time ago, you paid all of it with property tax; then, for a while, you paid none of it with property tax. That was after the tax shift when the State eliminated property tax altogether. You paid with other resources to pay all of your state's general obligation debt for a while. For a while you had a 15-cent property tax that was applied to debt; now, there is a 17-cent property tax that is applied to debt. That does not quite cover all of your debt. In each biennium, you revisit the question as to what is the best way to pay that expense based on what other state expenses are. You and the Assembly decide the best way to do that through the budget process.

SENATOR CEGAVSKE:

Why would we pick a variable-rate interest loan after all we are hearing about them as to how they have affected mortgages and with all the things that are going on? I am concerned about that.

MR. SWENDSEID:

I will defer to the State Treasurer's Office about that.

KATE MARSHALL (Nevada State Treasurer):

Currently, the way the Local Government Investment Pool makes its interest, is that it goes out in the market. Over \$70 million matured in that fund this morning. It makes interest. We calculate that interest monthly. I felt it was important that the participants in the Local Government Investment Pool were not hindered through this note, should they choose to accept it. It has to work for their benefit. I have a fiduciary duty to them as the manager of that pool.

The best way to do that would be to align the interest rates. We calculate the interest rate monthly. This note, should it be issued, would also be calculated monthly. I added 0.25 percent so that they win. At the same time, it precludes the State of Nevada from having to go into the commercial market. For example, if I went into the commercial market today, I would pay over 5.5-percent interest and there would be issuing costs. If I went into the market for \$150 million, \$640,000 would be incurred by the State in issuing costs. In this way we do not have those issuing costs. Today, the Local Government Investment Pool is making 1.97 percent. If we issued a note to them today, we could say they made 2.25 percent. They make a little more; you pay a little less. This seems to be an equitable way to structure it.

SENATOR CEGAVSKE:

I appreciate your answer. It is basically what we have been told. I am trying to rationalize this as being a good decision for the State of Nevada. We are already in a deficit, in my opinion, and the loan puts it in further deficit. To add interest to it now, considering what we are going through right now, causes me concern.

On page 6 of the bill, section 3, line 35, it says, "If a local government wishes to withdraw any of its money ... ." I must ask what will we do if any of these entities decide to pull out their funds?

MR. SWENDSEID:

The bill provides the ability for the State Treasurer to sell this note on the note market which would have the terms the State Treasurer mentioned which are not as favorable to the State. Just like all of the other investments in the Local Government Investment Pool, if the local governments take their money out of the pool, the State Treasurer has to sell the investments in order to generate money to provide the local governments with getting their investments back. The bill allows the State Treasurer to sell this investment from the pool at an interest rate that would generate the power amount of the investment. The bill allows the State Treasurer to do that.

MS. MARSHALL:

There is another difference that needs to be indentified. If I went into the open market, the Budget Director and the Legislature would tell me how much they want me to issue. When you open a line of credit, you incur no debt. You only incur debt if you need money and, then, only for as much as you need. That is a huge difference.

I do not think it is prudent, at this time, for the State to identify a certain amount of money, whether it is \$150 million or the \$300 million it needs, and to go into the open market to seek that money. If you do not need it, why get it up front? In this way, you can wait and see and, then, only borrow what you might need. It allows us to further restrict this borrowing.

SENATOR CEGAVSKE:

I would not advocate going into the market. But, I do not advocate for us to do as you are suggesting. That is the issue I have. The interest and the loan take us into more of a deficit.

SENATOR TOWNSEND:

I would like to address section 1 of the bill. Is it understood that the Local Government Investment Pool is primarily a 90-day commercial paper? Is that correct? If not, in what are you investing?

MS. MARSHALL:

The *Nevada Revised Statutes* allow us to invest in quite a variety of financial instruments. There are corporate notes, U.S. Treasury bonds and agency commercial paper. We are invested in Federal Home Loan Bank and the Federal Farm Credit Bank.

SENATOR TOWNSEND:

You might not want to read all of those. In today's economic world, what looked good today, may not look good tomorrow.

MS. MARSHALL:

This is a conservative portfolio.

SENATOR TOWNSEND:

We have heard that before. Remember General Motors.

Under lines 8 and 9, the bill talks about the note: "Must be issued upon the order of the State Treasurer and pursuant to the provisions to the State Securities Law..." Under the State Securities Law, does the Board of Examiners have to review that and authorize that or is that strictly a decision made by your office, not under this bill, but under the current law?

MR. SWENDSEID:

The general rule, under current law, is that unless an act otherwise provides a general obligation of the State, it needs to be approved by the State Board of Finance. This act does in otherwise provide. There are other acts that otherwise provide, but most acts do not. Almost all of the State's general obligations are approved by the State Board of Finance.

SENATOR TOWNSEND:

This would be an exception to that?

MR. SWENDSEID:

That is correct.

SENATOR TOWNSEND:

Was there discussion on why you would not run this through the Board of Examiners or the Board of Finance? Is there a reason we would not do that?

MR. SWENDSEID:

It was felt that if this Legislature in this Special Session authorized the borrowing, it was not necessary to go through the State Board of Finance, but there is no bias against the State Board of Finance.

SENATOR TOWNSEND:

The next three lines talk about "for purposes of this section and the State Securities Law, the State Treasurer shall be deemed to constitute an agency of the State..."What we are saying is instead of the Board of Finance where there are three people, now, you are saying one person or one state agency is now going to be that person.

MR. SWENDSEID:

You are correct. There are other places where that is done in NRS. It is the State Securities Law that uses words like "agency" and "resolution," and if there is a single individual authorizing a debt, you do not resolve to do it, instead you order to do it. That is why we had to use these words.

SENATOR TOWNSEND:

I am not disagreeing with this at all. I am trying to make certain that I understand what mechanism we are using for a line of credit. I think it is important that everyone understands we are not just running out and borrowing money. We are establishing a line of credit.

Let us discuss page 3 of the bill. Perhaps, it is because of the drafting language, but I would like to ask a question on line 8. It says, "Each such determination shall be deemed to be conclusive and is not affected by any subsequent changes in the book value of the total investment...". The previous lines talk about \$160 million or 25 percent of the fund whichever is less. Then it says "not affected by any subsequent changes in the book value of the total investments of the ...fund," that leaves some questions in my mind. Does the Governor have to request all \$160 million from you in order to get it right away in order to protect against the drop in a value of the fund because he may be precluded from getting the \$160 million if the value of the fund drops too much over the next four or five months? Am I not reading this correctly?

KEVIN POWERS (Senate Legal Counsel):

I believe to a degree you are reading this correctly. It is supposed to establish a moment in time when the determination is made as to what is 25 percent of the book value of the fund. If the line of credit is accessed in increments, then that 25 percent amount will vary depending on the total amount of assets in the fund. It is possible that if the total amount of assets and their value in the fund drops after the initial increment is allotted, that it could fall below the 25-percent amount. Then the line of credit could not be accessed any further. However, that has to be counterbalanced by the fact that to access this line of credit, it has to be done before August 31, 2009. The chance of this largely diminishing in value is probably not that great. Local governments can access their money.

SENATOR TOWNSEND:

My concern is with "probably." I do not want anyone leaving here, when we pass this, saying that everything is handled. If there is a drop in this fund and we had not accessed those funds by that date, we might not get to \$160 million.

The way this is drafted it says whichever is "less", and if that 25 percent were to drop to a point less than \$160 million and we had not accessed it already, it is my understanding we would

not be able to get it. Unless I read this wrong, we would be precluded from accessing the total amount we are putting into our budget figures.

I wish for everyone to understand if there is another downturn, and it is not because you invested in the wrong things for you have a broad and conservative portfolio, but if the market drops, are you required under the rules with a mark to market for this particular fund?

MS. MARSHALL:  
No.

SENATOR TOWNSEND:  
Good, thank you. With a mark to market, we could be out of the mix in 20 minutes. Even being protected against that, we need to understand when we leave here, there is that potential.

MS. MARSHALL:  
You are correct. This is a policy position so I make no approval or disapproval. It is my understanding that the cuts will be incurred first and this will happen last. Then, only what you need will be used.

Almost all of the investments are in U.S. Treasury Bonds, not exposed to corporate America. We do mark to market on June 30 for the fiscal year.

SENATOR TOWNSEND:  
So, you only do this every year?

MS. MARSHALL:  
Yes, for every fiscal year.

SENATOR TOWNSEND:  
Is that required under GASB's new rules or under SEC rules?

MS. MARSHALL:  
That is under GASB's rules.

SENATOR TOWNSEND:  
Good. Thank you.

SENATOR CARE:  
Thank you for this information. The legislative intent is important, and you have added to it. Any other questions from the committee on Assembly Bill No. 2?

SENATOR HORSFORD:  
I would like to thank the local governments for being part of the solution throughout the State. There are rural counties, urban counties and school districts that invest into this fund. I am please you were willing to be open to consider this option and to allow the discussion to go forward helps to come to a short-term solution, and you are a big part of our ability to do that. I appreciate your efforts.

SENATOR CARE:  
I will close the hearing on Assembly Bill No. 2.

Senator Townsend moved to do pass Assembly Bill No. 2.  
Senator Nolan seconded.

SENATOR CEGAVSKE:  
While I appreciate the work that was done on this bill and I am supportive of section 4 and the following portions of the bill, I will vote "no" on the line of credit.

SENATOR COFFIN:  
When I first heard about this on November 26, I was dismayed that the State of Nevada would follow the treacherous path of the federal government, particularly in this decade of borrowing. Borrowing to cover operating is anathematic to all of us. It does not sound right.

Some of us do this in our personal lives, and the country is now suffering because of this habit created in Washington, D.C., to borrow and to keep borrowing forever.

When I first heard of this bill, I could not imagine that we had done this before. I called Guy Roche, the State Archivist, to ask for help. He looked into the historical aspects of this and told me that it has been done before. During the mining depression of the 1880s and 1890s, we borrowed five or six different times. I looked up the statutes from 1881 and read the Governor's addresses at the following legislative sessions. Mr. Roche found five more times that the State had borrowed. They always borrowed from other state funds. So there is a precedent set for borrowing, just not one from local governments.

There was a tax imposed at those times. In 1881, it was 10 cents on the ad valorem, which would be like a mil now with our asset base. While they were borrowing, they recognized there was a problem. They were forbidden by the Constitution from deficit spending, but they secured and they paid the price with a tax. That is not an easy thing to say these days because everyone wants to duck the thought of taxes. In the opinion and in the bill is a reconciliation of a way to settle this debt. Not only is there an ending time, which I would prefer to be shorter, but we actually have a tax in place to pay this debt back.

This obligation, whatever the amount is when we borrow, cannot exceed the 2-percent debt limit we have in place. Therefore, we are disciplining ourselves. There may be a few buildings we will not be able to build if we have this debt outstanding. We are showing some fiscal restraint. I do not like the concept of having to borrow, but it is what the State has done nine or ten times to get us through the crisis in the years between 1881 and 1905.

With the new thoughts that have come out in the past few days, the bill is much better than it was in its original form. I will be supporting this bill.

SENATOR HARDY:

I appreciate the Senator's historical analysis because I had thought it had not been done before.

I am uncomfortable with the precedent that this sets. To paraphrase Winston Churchill, this is the worst idea I have heard, except for all of the others.

We are in a situation where we have to think and act outside of the box. I commend those who brought this forward. It is necessary, and I am going to support the bill, but the only reason I am going to do this is because it buys us the time to discuss in the upcoming session systemic reforms to the way we do business in this State. When I say systemic reforms, I am talking about systemic on the expenditure side and systemic reforms on revenue side. The time has come that we as the Legislature seriously analyze both of those and make systemic reforms to the way we do business so we do not face this again. Economic downturns are bound to happen. State legislatures have to have a way to deal with them. This is not the first economic downturn we have ever dealt with as a State. We need to anticipate doing this as we go forward. Everyone that serves in the Legislature understands where the weaknesses in the system lie. We have gone forward without addressing them in the past. The time has come where we have to address them. I will support this dramatic, drastic and unfortunate step to buy us time as a Legislature when we come into Session in February to review and make systemic reforms to the way the State does business.

Motion carried. Senator Cegavske voted no.

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

Motion carried unanimously.

SENATE IN SESSION

At 5:16 p.m.

President Krolicki presiding.

Quorum present.

## REPORTS OF COMMITTEES

*Mr. President:*

Your Committee of the Whole, to which were referred Assembly Bills Nos. 1, 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TERRY CARE, *Chair*

## MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, December 8, 2008

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 1, 2.

DIANE M. KEETCH

*Assistant Chief Clerk of the Assembly*

## GENERAL FILE AND THIRD READING

Assembly Bill No. 1.

Bill read third time.

Roll call on Assembly Bill No. 1:

YEAS—21.

NAYS—None.

Assembly Bill No. 1 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 2.

Bill read third time.

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

This is the second special session we have had this year to deal with a fiscal crisis. I have been in the Legislature since 1972. We have had ups and downs, and we have had economic downturns. In my memory, we have not had in this State or in this Country, during that period of time, any downturn in our economy that has been as sustained as the one we are now experiencing. Today, we are dealing with something unforeseen even since last July. We thought we had dealt with all that could be foreseen for FY 2009. At that time, through our efforts, jointly working together across party lines, we met with the Governor and we came up with a plan. We essentially cut \$1.2 billion out of our existing budget. Who could have foreseen that, now, in December, we would have to meet again to deal with an additional shortfall of \$340 million? However, that is the case.

Several weeks ago, the Governor indicated that he would like to meet with leadership and to develop a plan that would deal with the shortfall. A plan that would have the least impact on not only essential services that the State provides but one that would not involve lay offs of employees beyond what has already been done by freezes and vacancy savings and would not have to raise taxes during this fiscal year. Leadership did have three or four meetings with the Governor. The plan that is embodied in Assembly Bills Nos. 1 and 2 and Senate Bills Nos. 1 and 2 contains the proposal dealing with that shortfall. We are at the point here, today, where our action upon this last bill, Assembly Bill No. 2, will complete that process.

I think it goes without saying that there are segments of those bills that probably every member of this Legislature has some concerns about. We wish we did not need to come here, today, to deal with this issue. We need to remind ourselves there is a provision in Article 9 of the State Constitution which requires us under our oath as Legislators to have a balanced budget and that our expenditures cannot exceed our revenues. That is our first obligation. I am hopeful that those who serve in this Legislature understand that.



We are not here because we want to inject misery on the people in this State. We are not here because we want to make these kind of cuts or because we want to take the action that is contained in this package of bills. It requires all of these four bills to be passed in order for us to do our constitutional duty. There are things in these bills that cause political heartburn. A lot of us would like to have made other choices.

The most contentious of these is contained in the bill we are about to vote on, Assembly Bill No. 2. The most contentious is the proposed line of credit using the Local Government Investment Pool as a source of potential borrowing. When this was first proposed it was something that concerned many of us about whether it would set a precedent. We have since learned there already is some precedent. It is not a precedent I would like to see used often or at all. Hopefully, revenues will improve in the future. We are going to have some serious problems in the next biennium. We all know that. There are no signs either in this State or in the Nation that the economic situation is going to improve rapidly. What we do here sets a predicate for what we are going to have to deal with when we reconvene in regular session in February.

Those who have concerns about the line of credit should ask themselves, "What are the alternatives to that?" That is \$160 million toward our constitutional duty to come up with a total of \$340 million. As I see it, the alternative is to make additional cuts. We have already cut pretty deep.

We went through the process today and heard from the Department of Health and Human Services and others as to the impact. There are still people out there who say to cut, cut and cut. Unfortunately, they do not have to come in here and vote. They do not have to get the e-mail, the telephone calls or the letters from people who have need for these services. I am not trying to be dramatic about this. I am trying to be practical. These are serious questions that we are going to have to deal with in the next Session.

I commend the State Treasurer for coming up with the suggestion of implementing the line of credit that we are authorizing today. It is not a perfect solution. It is an alternative to what others would have us do—to raise taxes or to make deeper cuts. Neither of those is a practical suggestion.

The question we ask of those who would oppose this is to ask them for suggestions, "What are your suggestions to replace this?" I want to emphasize what we are actually doing is not to immediately borrow \$160 million. We are authorizing a line of credit utilizing a fund that is available and, as the State Treasurer indicated, does not need to go through a costly process of borrowing. We are offering a premium of 25 basis points to the local governments whose money is in this fund. It is a good solution, not a perfect solution.

The question was raised as to the method of repayment. Whatever we do, whether it is through general obligation bonds or not, that is a requirement that has to be in our budget. Under section 2 of the bill, the Governor will be required to put that in as an obligation that must be paid. It is part of the Executive Budget. We do not have to have a specific plan to repay it. It will be repaid similarly to all of the other general obligations of public debt that now exist for the State. They are required to be in the Executive Budget. The process will be to repay it over a period of four years. Those of us who serve in this body will be obligated to honor that requirement.

There are a lot of things in this bill that I do not like. I do not like the fact that we are in a recession. I am going to do my part as a Legislator who took an oath to uphold the Constitution of this State and to deal with the problems that we face in this State. To get us through FY 2009 with the least impact, I will support this bill.

What we do in the next regular session is going to be very difficult. We will have 120 days to do that. There may be other options. We are probably not going to have the level of agreement that we have here, today. There will be a many opportunities for discussion, for those who feel we may have not done what is appropriate today to come up with other solutions. I certainly would encourage them to do so.

Senator Cegavske requested that her remarks and those that Senator Hardy made on Assembly Bill No. 2 during Committee of the Whole be entered in the Journal.

SENATOR CEGAUSKE:

While I appreciate the work that was done on this bill and I am supportive of section 4 and the following portions of the bill, I will vote "no" on the line of credit.

SENATOR HARDY:

I appreciate the Senator's historical analysis because I had thought it had not been done before.

I am uncomfortable with the precedent that this sets. To paraphrase Winston Churchill, this is the worst idea I have heard, except for all of the others. We are in a situation where we have to think and act outside of the box. I commend those who brought this forward. It is necessary, and I am going to support the bill, but the only reason I am going to do this is because it buys us the time to discuss in the upcoming session systemic reforms to the way we do business in this State. When I say systemic reforms, I am talking about systemic on the expenditure side and systemic reforms on revenue side. The time has come that we as the Legislature seriously analyze both of those and make systemic reforms to the way we do business so we do not face this again. Economic downturns are bound to happen. State legislatures have to have a way to deal with them. This is not the first economic downturn we have ever dealt with as a State. We need to anticipate doing this as we go forward. Everyone that serves in the Legislature understands where the weaknesses in the system lie. We have gone forward without addressing them in the past. The time has come where we have to address them. I will support this dramatic, drastic and unfortunate step to buy us time as a Legislature when we come into Session in February to review and make systemic reforms to the way the State does business.

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

Thank you, Mr. President. I also have heartburn, as does the Minority Leader, with having to borrow money like this. But, this is a line of credit, and the State government is a business. I think every business in this State and every business in this Nation operates on lines of credit. I know that I have had a line of credit for business. I assume that everyone in here has had a line of credit, and probably our ranchers have also. You have to roll with that line of credit. I know the big three automakers are now in Washington asking for a line of credit. It is something we do not like to do.

But, like the Minority Leader said, this is something we have to do today. I say in support of all businessmen, we are going to operate on a line of credit for the next year. We will put that aside and be more stable next year and we can reduce that line of credit.

Thank you, Mr. President.

Senator Coffin requested that his remarks on Assembly Bill No. 2 made during Committee of the Whole be entered in the Journal.

SENATOR COFFIN:

When I first heard about this on November 26, I was dismayed that the State of Nevada would follow the treacherous path of the federal government, particularly in this decade of borrowing. Borrowing to cover operating is anathematic to all of us. It does not sound right. Some of us do this in our personal lives, and the country is now suffering because of this habit created in Washington D.C. to borrow and to keep borrowing forever.

When I first heard of this bill, I could not imagine that we had done this before. I called Guy Roche, the State Archivist, to ask for help. He looked into the historical aspects of this and told me that it has been done before.

During the mining depression of the 1880s and 1890, we borrowed five or six different times. I looked up the statutes from 1881 and read the Governor's addresses at the following legislative sessions. Mr. Roche found five more times that the State had borrowed. They always borrowed from other state funds. So, there is a precedent set for borrowing, just not one from local governments.

There was a tax imposed at those times. In 1881, it was 10 cents on the ad valorem, which would be like a mil now with our asset base. While they were borrowing, they recognized there was a problem. They were forbidden by the Constitution from deficit spending, but they secured and they paid the price with a tax. That is not an easy thing to say these days because everyone

wants to duck the thought of taxes. In the opinion and in the bill is a reconciliation of a way to settle this debt. Not only is there an ending time, which I would prefer to be shorter, but we actually have a tax in place to pay this debt back.

This obligation, whatever the amount is when we borrow, cannot exceed the 2-percent debt limit we have in place. Therefore, we are disciplining ourselves. There may be a few buildings we will not be able to build if we have this debt outstanding. We are showing some fiscal restraint. I do not like the concept of having to borrow, but it is what the State has done nine or ten times to get us through the crisis in the years between 1881 and 1905.

With the new thoughts that have come out in the past few days, the bill is much better than it was in its original form. I will be supporting this bill.

Roll call on Assembly Bill No. 2:

YEAS—20.

NAYS—Cegavske.

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

Bill ordered transmitted to the Assembly.

#### REMARKS FROM THE FLOOR

Senator Hardy requested that Senator Lee's remarks be entered in the Journal.

SENATOR LEE:

Thank you, Mr. President. I just want to take some personal time with you as people and not talk to you as Senators or lobbyists but as friends today. I went through a grueling health issue, and there were a couple of times I thought I would die. I did not want to be here anymore. But, you are such good people. I got so many cards and letters and phone calls. In each and every case, it just injected strength into me at a time when I did not think I mattered. Maybe I could just go on and maybe get somebody to just prop me up and say, "Hey, you're a good guy. We need you. Keep it up. I went through it."

There are people in this building that have had personal challenges as I have had, maybe worse than I have had. They were able to share those challenges with me. Hearing their story just gave me strength, I thought of Maurice. Bernice pulled me aside. Senator Raggio propped me up, and just the kindness and love that you show to me as a human being. Another thing that I want to thank you for is that I believe in the power of prayer. I know and I felt that I was getting a lot of prayers sent my way. Just when I would get a bad attitude, which did not happen often, I just knew someone was praying for me. I knew that person was probably a little closer to the heavenly Father than I was, and it just might work. I have seven kids and eight grandkids, and I just want to live a little longer. Sometimes, I would lean on your testimony, your strength. I needed that every time. The personal tragedies that you shared with me, you will never know. You did not have to do it. After I heard your story, I did not want to whine anymore. I did not cry. I just wanted to say, "oh, my gosh," I didn't want to have that because it sounded worse than what I had. I do not know what good will come out of this except that I will be alive. I can tell you that I have learned how to love a lot better. I have learned how to have a lot more compassion than I ever had. I don't think that I was ever a bad person before, but I am more in tune to what probably is more important in this world now than I was last year. From me and my family, we thank you as friends, we care about you. I hope that someday I can come and aid and strengthen you the way you good people have done for me. I want you to know that you are really good people, and I love you very much.

#### MOTIONS, RESOLUTIONS AND NOTICES

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

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

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

Senate in recess at 5:35 p.m.

#### SENATE IN SESSION

At 5:45 p.m.

President Krolicki presiding.

Quorum present.

A committee from the Assembly, consisting of Assemblymen Anderson, Christensen and Assemblywoman Leslie appeared before the bar of the Senate and announced that the Assembly is ready to adjourn *sine die*.

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

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

#### REMARKS FROM THE FLOOR

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

Thank you, Mr. President. I would like to say that as we bring this Special Session to a close, I would first acknowledge the extraordinary collegiality and bipartisanship that guided us through the last several weeks which led up to today and throughout this long day. Although under difficult circumstances and marked by tough decisions, today can serve as an example of how if we set ourselves to it, we can work together for the citizens of this great State. I trust that we will approach the next Session with the same open commitment and understanding as we have today. I would like to recognize my esteemed colleague, the Minority Leader, and my Republican colleagues for their probing and comprehensive questions. Their comments this evening, their efforts and spirit of bipartisanship are appreciated. They will not soon be forgotten. I would also like to thank my fellow Democrats, particularly my colleague, Senator Care, who carefully presided over the Committee of the Whole today and thank our three new members of this body. I can say to you that this is how I think bipartisanship can and should work. I want to thank our Fiscal and Legal team, our incredible Secretary's Office team and everyone who worked behind the scenes tirelessly to aid in this process.

In closing, I believe that we have met the call of this Special Session that required immediate action in order to preserve the integrity and viability of the General Fund for fiscal year 2009 and thereby allowing for the continuation of vital services to the constituents that we serve.

#### GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Dale Raggio.

Senator Horsford moved that the Twenty-fifth Special Session of the Senate of the Legislature of the State of Nevada adjourn *sine die*.

Motion carried.

Senate adjourned *sine die* at 5:48 p.m.

Approved:

BRIAN K. KROLICKI  
*President of the Senate*

Attest: CLAIRE J. CLIFT  
*Secretary of the Senate*